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8 *Attorney for Plaintiffs*

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 BERNADINE GRIFFITH,
13 PATRICIA SHIH, RHONDA
14 IRVIN, JACOB WATTERS,
15 individually and on behalf of all
16 others similarly situated,
17 Plaintiffs,

18 vs.

19 TIKTOK, INC., a corporation;
20 BYTEDANCE, INC., a corporation
21 Defendants.

Case No. 5:23-cv-00964-SB-E

**DECLARATION OF Y. GLORIA
PARK**

1
2 I, Y. Gloria Park, hereby declare under penalty of perjury that the following is
3 true and correct:

4 1. I am over the age of twenty-one (21) years and employed as an associate
5 at Susman Godfrey L.L.P. and counsel of record of Plaintiffs in the above-captioned
6 litigation. I submit this Declaration in support of Plaintiffs' Motion to Enforce the
7 November 27, 2023 Court Order on One-Day Sample Data and for Evidentiary
8 Sanctions.

9 2. I am competent to testify to the matters stated in this Declaration and
10 have personal knowledge of the facts and statements in this Declaration.

11 3. Attached as Exhibit 1 is a true and correct copy of the Court's Order
12 Continuing Deadlines in the Case Management Order, dated January 2, 2024.

13 4. Attached as Exhibit 2 is a true and correct copy of an e-mail I sent to
14 Defendants' counsel on December 15, 2023 regarding "Griffith/TikTok – Incomplete
15 One-Day Sample Data Production."

16 5. Attached as Exhibit 3 is a true and correct copy of an e-mail I sent to
17 Defendants' counsel on January 11, 2024 regarding "Griffith v. TikTok – Meet and
18 Confer on [Plaintiffs'] Motion to Enforce Court's Order."

19 6. Attached as Exhibit 4 is a true and correct copy of an e-mail I sent to
20 Defendants' counsel on January 14, 2024 regarding "Griffith v. TikTok – Meet and
21 Confer on [Plaintiffs'] Motion to Enforce Court's Order."

22 7. Attached as Exhibit 5 is a true and correct copy of an e-mail I sent to
23 Defendants' counsel on January 18, 2024 regarding "Griffith v. TikTok – Meet and
24 Confer on [Plaintiffs'] Motion to Enforce Court's Order" and memorializing the
25 parties' January 17, 2024 conference.

26 8. Attached as Exhibit 6 is a true and correct copy of Defendants TikTok
27 Inc. and ByteDance Inc.'s Amended Responses and Objections to Plaintiffs' Third
28 Set of Interrogatories (No. 15), dated January 19, 2024.

EXHIBIT 1

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

BERNADINE GRIFFITH, PATRICIA
 SHIH; RHONDA IRVIN; JACOB
 WATTERS, individually and on behalf
 of all others similarly situated,

Plaintiffs,

vs.

TIKTOK, INC, a corporation;
 BYTEDANCE, INC., a corporation,

Defendants.

CASE NO. 5:23-cv-00964-SB-E

**ORDER CONTINUING
 DEADLINES IN THE CASE
 MANAGEMENT ORDER**

Date: January 19, 2024

Time: 8:30 a.m.

Crtrm.: 6C

Assigned to Hon. Stanley Blumenfeld,
 Jr.

Courtroom 6C

Orig. Compl.: May 26, 2023

Orig. Resp. Pldg.: July 24, 2023

Having considered Plaintiffs' unopposed motion to continue the deadlines in the case management order (CMO), Dkt. No. [82](#), and Defendants' statement of non-opposition, Dkt. No. [84](#), the Court hereby GRANTS the motion and modifies the CMO by adopting the Proposed Dates in the table below. The January 19 hearing on the motion to continue is VACATED.

<u>Event</u>	<u>Prior Dates</u>	<u>Current Dates</u>	<u>Proposed Dates</u>
Trial	None	09/30/24	11/25/24
Pretrial Conf.	None	09/13/24	11/08/24
Motion to Amend Pleadings	None	None	None
Motion for Class Certification due	None	02/09/24	05/03/24
Opposition to Motion for Class Certification due	None	02/23/24	05/17/24
Reply Brief ISO Motion for Class Certification due	None	03/01/24	05/24/24
Hearing on Motion for Class Certification	None	03/15/24	06/07/24
Initial Expert Disclosure due	None	04/26/24	07/19/24
Rebuttal Expert Disclosure due	None	05/10/24	08/09/24
Fact Discovery Cutoff	None	05/10/24	08/09/24
Expert Discovery Cutoff	None	06/07/24	08/23/24
Discovery Motion Hearing Cutoff	None	06/07/24	08/23/24
Non-Discovery Motion Hearing Cutoff	None	06/21/24	08/23/24
Settlement Conf. Deadline	None	07/05/24	08/30/24
Joint Post-settlement Status Conference Report due	None	07/12/24	09/06/24
Post-Settle. Conf.	None	07/19/24	09/13/24
Trial Filings (1st Set)	None	08/16/24	10/11/24
Trial Filings (2nd Set)	None	08/30/24	10/25/24

The parties should not expect any further extensions of these deadlines absent a showing of good cause.

Dated: January 2, 2024

Stanley Blumenfeld, Jr.
United States District Judge

EXHIBIT 2

From: [Gloria Park](#)
To: [Mancall-Bitel, Sophie](#); [Yin, Kelly](#); [Hsu, Sarah](#); [Torrez, Shallen](#); [Weibell, Tony](#); [Jih, Victor](#); [Young, Joseph](#)
Cc: [Christopher J. Lee](#); [Ekwan E. Rhaw](#); [Greg Fisk](#); [Gregory B. Linkh](#); [Houston Davidson](#); [Jessica D. Kinsey](#); [Jonathan Rotter](#); [K. Wolke](#); [Kalpana Srinivasan](#); [Marc E. Masters](#); [Michael Gervais](#); [Nicholas Loaiza](#); [Steven Sklaver](#); [John McCauley](#); [Gloria Park](#)
Subject: Griffith/TikTok - Incomplete One-Day Sample Data Production
Date: Friday, December 15, 2023 7:12:47 PM

Counsel,

We write to follow up on Defendants' production in response to the Court's order that Defendants produce by December 11 "a sample of non-TikTok user data that Defendants collect, generate, and process on a single day." We understand TIKTOK-BG-000008271, TIKTOK-BG-000008272, TIKTOK-BG-000008273 to be the responsive data and that the day that Defendants chose is November 30, 2023.

Our review of the spreadsheets thus far raises concerns that the production is incomplete.

First, the Court's order granting the motion to compel required Defendants to produce not only collected data but also "generated" and "processed" data. Plaintiffs explained in their briefing that the request, which the Court granted, encompasses "all data that is generated (e.g., new data created by combining non-TikTok user data collected with other information) and processed (e.g., all copies of the data that is initially collected for downstream uses)." Defendants do not appear to have produced any generated or processed data. If it is Defendants' position that they have done so, please identify in detail where in the production that data is.

Second, this production appears to be only a subset of data collected on November 30, 2023 and specifically the subset of data generated from iOS devices and some desktop devices. It also appears to be data from only standard events and no custom events. Have Defendants produced **all** data collected on November 30, 2023 as required by the Court order? If not, how did Defendants select this sample set of data to selectively produce?

Third, there appear to be redactions in the production. Of the 121 high-level fields of data produced, well over half of the fields contain "Null," "0" or "blank" values. These fields appear to include IP address, various IDs, cookies, matching fields, email, external ID, and phone. Did Defendants redact this data from the production? If so, did Defendants redact the data during the normal

course of business or for this litigation? If redacted during the normal course of business, how long is each field retained in Defendants' data logs before it is redacted? Finally, in light of the heavy redactions, Plaintiffs request that Defendants provide descriptions of the 121 fields produced so that we can understand what data fields TikTok collects through the TikTok SDK.

Best,
Gloria

EXHIBIT 3

From: [Gloria Park](#)
To: [Mancall-Bitel, Sophie](#); [Hsu, Sarah](#); [Christopher J. Lee](#); aweibell@mayerbrown.com
Cc: [Ekwon E. Rhaw](#); [Marc E. Masters](#); [Jonathan Rotter](#); kwolke@glancylaw.com; glinkh@glancylaw.com; [Kalpana Srinivasan](#); [Steven Sklaver](#); [Michael Gervais](#); [Greg Fisk](#); [Nicholas Loaiza](#); [Jih, Victor](#); [Yin, Kelly](#); [John McCauley](#); [Gloria Park](#)
Subject: Griffith v. TikTok - Meet and Confer on Pltfs" Motion to Enforce Court's Order
Date: Thursday, January 11, 2024 2:17:43 PM

Counsel,

Plaintiffs plan to file a motion to enforce the Court's November 27, 2023 order requiring Defendants to produce, in part, a sample of non-TikTok user data that Defendants collect, generate, and process on a single day. Dkt. 74. The Court ordered Defendants to produce this data by December 11, 2023. The data that Defendants produced on that day is deficient, at least for the reasons outlined in my December 15 email. To date, Defendants have failed to produce supplemental data or even to answer the questions that Plaintiffs asked about the deficiencies in the month since the production. Defendants are in violation of the Court's order. Please provide your availability this week or early next week to meet and confer on Plaintiffs' motion.

Best,
Gloria

Gloria Park | **Susman Godfrey**

o. 212.729.2029 | c. 917.340.3695

1301 Avenue of the Americas, 32nd Fl. | New York, NY 10019

gpark@susmangodfrey.com

This e-mail may contain privileged and confidential information. If you received this message in error, please notify the sender and delete it immediately.

EXHIBIT 4

From: [Gloria Park](#)
To: [Mancall-Bitel, Sophie](#); [Hsu, Sarah](#); [Christopher J. Lee](#); aweibell@mayerbrown.com
Cc: [Ekwon E. Rhaw](#); [Marc E. Masters](#); [Jonathan Rotter](#); kwolke@glancylaw.com; glinkh@glancylaw.com; [Kalpana Srinivasan](#); [Steven Sklaver](#); [Michael Gervais](#); [Greg Fisk](#); [Nicholas Loaiza](#); [Jih, Victor](#); [Yin, Kelly](#); [John McCauley](#); [Gloria Park](#)
Subject: RE: Griffith v. TikTok - Meet and Confer on Pltfs" Motion to Enforce Court"s Order
Date: Sunday, January 14, 2024 5:56:00 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Counsel,

TikTok’s reading of the Court’s order is inconsistent with the parties’ briefing on the issue, which expressly stated that “a sample of non-TikTok user data that Defendants collect, generate, and process on a single day” encompasses the following: “not just the non-TikTok user data that is *collected* on a single day but also such data that is *generated* or *processed* on a single day. The request covers all data that is generated (*e.g.*, new data created by combining non-TikTok user data collected with other information) and processed (*e.g.*, all copies of the data that is initially collected for downstream uses).” Dkt. 77. TikTok’s reading of the Court’s order “as requiring one snapshot of the data table containing event-level Pixel and Events API data that has been collected and processed, and from which aggregated analyses may be generated from time to time” is unsupported and confirms Plaintiffs’ serious concerns about TikTok’s failure to comply with the Court’s order. Even more concerning is the fact that Plaintiffs laid out our reading of the scope of the Court’s order in our December 15 email. If Defendants had a good-faith disagreement about that scope, they should have flagged the disagreement promptly, rather than waiting for a month and providing a belated, retroactive interpretation only after Plaintiffs expressed their plan to move to enforce the order.

As the record reflects, TikTok produced the initial data on December 11, and Plaintiffs analyzed the data within days and followed up with concerns about its deficiency on December 15. In the month since then, Defendants have failed to address a single question that Plaintiffs have raised. While we appreciate your position that producing the data is “not as simple as pushing a button,” it is unclear why answering basic questions (like why there are redactions in the production and whether Defendants can provide descriptions of the 121 data fields) should take over a month.

Finally, as you know, this one-day sample data isn’t just important in its own

right but also informs other outstanding discovery disputes. For instance, many of the data fields reflected in the one-day sample data refers to Pangle, notwithstanding Defendants' representation that they do not use data collected through the Pixel and Events API for any purpose related to Pangle.

The parties have a scheduled meet and confer on Wednesday, January 17. Please be prepared to discuss this issue on that call.

Best,
Gloria

From: Mancall-Bitel, Sophie <smancallbitel@wsgr.com>

Sent: Friday, January 12, 2024 5:12 PM

To: Gloria Park <GPark@susmangodfrey.com>; Hsu, Sarah <sarah.hsu@wsgr.com>; Christopher J. Lee <clee@birdmarella.com>; aweibell@mayerbrown.com

Cc: Ekwan E. Rhow <erhow@birdmarella.com>; Marc E. Masters <mmasters@birdmarella.com>; Jonathan Rotter <jrotter@glancylaw.com>; kwolke@glancylaw.com; glinkh@glancylaw.com; Kalpana Srinivasan <ksrinivasan@SusmanGodfrey.com>; Steven Sklaver <ssklaver@SusmanGodfrey.com>; Michael Gervais <MGervais@susmangodfrey.com>; Greg Fisk <GFisk@susmangodfrey.com>; Nicholas Loaiza <NLoaiza@susmangodfrey.com>; Jih, Victor <vjih@wsgr.com>; Yin, Kelly <kyin@wsgr.com>; John McCauley <JMcCauley@susmangodfrey.com>

Subject: RE: Griffith v. TikTok - Meet and Confer on Pltfs' Motion to Enforce Court's Order

EXTERNAL Email

Gloria:

TikTok strongly disagrees that its production of a 24-hour data table snapshot does not meet the Court's November 27 order. We read the Court's order as requiring one snapshot of the data table containing event-level Pixel and Events API data that has been collected and processed, and from which aggregated analyses may be generated from time to time. That is what TikTok produced. In practicality, we do not believe a sample of raw, pre-processed data would provide Plaintiffs any meaningful new information and are happy to discuss this on a meet-and-confer.

With respect to Plaintiffs' other questions, as we have previously explained, the process of identifying and querying 24 hours' worth of unmatched Pixel and Events API data is complex, requiring input from multiple people at the company. It is not as simple as pushing a button. Given this complexity, it has taken our client time to work through your follow-up questions.

We would appreciate scheduling a meet-and-confer towards the end of next week in the hopes that we can reach resolution and focus on the outstanding discovery on both sides.

Kind regards,

Sophie

WILSON SONSINI

Sophia (Sophie) Mancall-Bitel

(she/her)

direct: 323.210.2993

mobile: 310.709.6432

smancallbitel@wsgr.com

Wilson Sonsini Goodrich & Rosati

1900 Avenue of the Stars, 28th Floor

Los Angeles, CA 90067

www.wsgr.com



From: Gloria Park <GPark@susmangodfrey.com>

Sent: Thursday, January 11, 2024 11:18 AM

To: Mancall-Bitel, Sophie <smancallbitel@wsgr.com>; Hsu, Sarah <sarah.hsu@wsgr.com>; Christopher J. Lee <clee@birdmarella.com>; aweibell@mayerbrown.com

Cc: Ekwan E. Rhow <erhow@birdmarella.com>; Marc E. Masters <mmasters@birdmarella.com>; Jonathan Rotter <jrotter@glancylaw.com>; kwolke@glancylaw.com; glinkh@glancylaw.com; Kalpana Srinivasan <ksrinivasan@SusmanGodfrey.com>; Steven Sklaver <ssklaver@SusmanGodfrey.com>; Michael Gervais <MGervais@susmangodfrey.com>; Greg Fisk <GFisk@susmangodfrey.com>; Nicholas Loaiza <NLoaiza@susmangodfrey.com>; Jih, Victor <vjih@wsgr.com>; Yin, Kelly <kyin@wsgr.com>; John McCauley <JMcCauley@susmangodfrey.com>; Gloria Park <GPark@susmangodfrey.com>

Subject: Griffith v. TikTok - Meet and Confer on Pltfs' Motion to Enforce Court's Order

EXT - gpark@susmangodfrey.com

Counsel,

Plaintiffs plan to file a motion to enforce the Court's November 27, 2023 order requiring Defendants to produce, in part, a sample of non-TikTok user data that Defendants collect, generate, and process on a single day. Dkt. 74. The Court ordered Defendants to produce this data by December 11, 2023. The data that Defendants produced on that day is deficient, at least for the reasons outlined in my December 15 email. To date, Defendants have failed to produce supplemental data or even to answer the questions that Plaintiffs asked about the deficiencies in the month since the production. Defendants are in violation of the Court's order. Please provide your availability this week or early next

week to meet and confer on Plaintiffs' motion.

Best,
Gloria

Gloria Park | Susman Godfrey

o. 212.729.2029 | c. 917.340.3695

1301 Avenue of the Americas, 32nd Fl. | New York, NY 10019

gpark@susmangodfrey.com

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EXHIBIT 5

From: [Gloria Park](#)
To: [Mancall-Bitel, Sophie](#); [Hsu, Sarah](#); [Christopher J. Lee](#); aweibell@mayerbrown.com
Cc: [Ekwan E. Rhow](#); [Marc E. Masters](#); [Jonathan Rotter](#); kwolke@glancylaw.com; glinkh@glancylaw.com; [Kalpana Srinivasan](#); [Steven Sklaver](#); [Michael Gervais](#); [Greg Fisk](#); [Nicholas Loaiza](#); [Jih, Victor](#); [Yin, Kelly](#); [John McCauley](#); [Gloria Park](#)
Subject: RE: Griffith v. TikTok - Meet and Confer on Pltfs' Motion to Enforce Court's Order
Date: Thursday, January 18, 2024 2:08:00 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Counsel,

We write to memorialize and follow up on yesterday's meet and confer on, among other things, the deficiencies in Defendants' production of one-day sample data.

As the record reflects, on November 27, 2023, the Court ordered Defendants to produce, by December 11, 2023, "a sample of non-TikTok user data that Defendants collect, generate, and process on a single day." The parties' briefing made clear that this encompasses the following: "not just the non-TikTok user data that is *collected* on a single day but also such data that is *generated* or *processed* on a single day. The request covers all data that is generated (*e.g.*, new data created by combining non-TikTok user data collected with other information) and processed (*e.g.*, all copies of the data that is initially collected for downstream uses)."

On December 11, Defendants produced three spreadsheets. On December 15, Plaintiffs followed up flagging numerous deficiencies in Defendants' production, including (1) that Defendants failed to produce any "generated" data, (2) that Defendants produced only a subset of data collected from some iOS devices and some desktop devices and produced only data from standard events and no custom events, and (3) that over half of the 121 data fields contain "Null," "0" or "blank" values. Plaintiffs further asked whether Defendants redacted the data during the normal course of business or for this litigation and requested descriptions of the 121 data fields in light of the heavy redactions.

Despite numerous follow-ups since December 15, Defendants did not produce supplemental data or even answer the questions presented in the December 15 email. On January 12, Defendants for the first time offered their own interpretation of the Court order, asserting that the order only "requir[es] one

snapshot of the data table containing event-level Pixel and Events API data that has been collected and processed, and from which aggregated analyses may be generated from time to time.” While Plaintiffs strongly disagree with this interpretation, even under Defendants’ own interpretation, their production is severely deficient for the reasons articulated in our December 15 email.

On yesterday’s meet and confer, Defendants represented that they are working on “re-querying” the data to provide a supplemental production that includes data from all devices and not just those using iOS, data from all events and not just standard events, and data that does not have fields nulled or zeroed out. Defendants however would not provide any specific deadline by which they would do so, noting that it may take a “few weeks” but not committing even to that timeframe. The Court’s order required Defendants to produce this data by December 11, and Plaintiffs reserve all rights related to Defendants’ delay and failure to abide by the Court-imposed deadline.

Defendants further declined to produce descriptions of the 121 data fields, noting that such descriptions will not be necessary once Defendants get around to producing the supplemental data but once again without providing any timeframe by which they would do so. Defendants also represented that the data fields are “self-explanatory” and asked whether there are specific data fields on which Plaintiffs would like more information. These are the subset of fields on which we request more information by no later than **Friday, January 26**:

- “event” – Does this field include both custom and standard events? How do these events map to publicly disclosed events in <https://ads.tiktok.com/help/article/standard-events-parameters?lang=en>?
- “user_type” – This field contains numerical values. What do the numerical values mean?
- “country”, “city”, “locale” – Are these fields locations of the user or advertiser?
- Please provide a full list of sub-fields for the following: “properties”, “predicted_properties”, “intelligent_properties”
- Please provide an explanation or description of the following fields:

“pixel_inspection”, “received_dc”, “tt_id_experimental_users”, “idc”,
 “is_compliant”, “is_onsite”, “is_standard”, “is_user_level”, “uid”,
 “union_uuid”, “req_id”, “clue_id”, “vid”, “gab_am_users”,
 “pm_pc_users”, “auto_email”, “auto_phone_number”,
 “collector_version”, “compliance_tags”, “detection_uv”,
 “is_event_inferred”, “flags_version”, “is_first”, “orit”, “rit”,
 “should_counted”, “tenant”, “product_level3_id”, “product_level5_id”,
 “pangle_am_matched_users”, “pangle_cookie_users”,
 “pangle_id_experimental_users”, “pangle_pm_matched_users”,
 “pangle_pm_users”

With regard to the portion of the Court’s order that required Defendants to produce data generated on a single day, Defendants maintained on the call that the order does not require Defendants to produce documents showing how they combined the data collected with other information to generate new data or to make use of the collected data. Defendants also asked whether it would be sufficient if they produced a few samples of the type of aggregated analysis that is run from the non-user data that is collected.

Defendants’ proposal is insufficient because Defendants have stated to the Court that they do not merely conduct “aggregated analysis” with non-user data. Rather, Defendants also use the data for machine learning and algorithm improvement. Accordingly, Plaintiffs believe that the Court order encompasses the production of at least the following:

- All the processing pipelines after the non-user data is collected, including (1) the pipeline names, names of machine learning algorithms, and names of aggregation tools, (2) technical documentation that shows how non-user data is used by these pipelines (for example, training machine learning algorithms, how data is aggregated) and what the results are, and (3) a sample of the output data or results from each pipeline; and
- Product requirement documents, technical design documents (including machine learning models and training strategies), and product and/or feature launch documents that reflect how Defendants use the non-user data.

Of course, these categories of documents are also encompassed in other discovery requests that Plaintiffs have served and should be produced even if

Defendants maintain that they are not covered by the Court's November 27 order. To the extent that Defendants do not have documentary evidence of the above, please so confirm.

Best,
Gloria

From: Mancall-Bitel, Sophie <smancallbitel@wsgr.com>

Sent: Thursday, January 18, 2024 12:33 PM

To: Gloria Park <GPark@susmangodfrey.com>; Hsu, Sarah <sarah.hsu@wsgr.com>; Christopher J. Lee <clee@birdmarella.com>; aweibell@mayerbrown.com

Cc: Ekwan E. Rhow <erhow@birdmarella.com>; Marc E. Masters <mmasters@birdmarella.com>; Jonathan Rotter <jrotter@glancylaw.com>; kwolke@glancylaw.com; glinkh@glancylaw.com; Kalpana Srinivasan <ksrinivasan@SusmanGodfrey.com>; Steven Sklaver <ssklaver@SusmanGodfrey.com>; Michael Gervais <MGervais@susmangodfrey.com>; Greg Fisk <GFisk@susmangodfrey.com>; Nicholas Loaiza <NLoaiza@susmangodfrey.com>; Jih, Victor <vjih@wsgr.com>; Yin, Kelly <kyin@wsgr.com>; John McCauley <JMcCauley@susmangodfrey.com>

Subject: RE: Griffith v. TikTok - Meet and Confer on Pltfs' Motion to Enforce Court's Order

EXTERNAL Email

Gloria:

But for a few data processing questions, TikTok has already complied with the Court's November 27 order.

You asked about the fields with "null," "0" or blank fields and about the scope of included devices/events. TikTok has been working on those questions, which came in right before the holidays. As you know, the production of a "one-day snapshot" is not something TikTok does as part of its normal business processes; it has required it to specify new queries, create tools, and implement them. TikTok is treating this as a high-priority request, but it requires a significant amount of human-hours and coordination across different groups to address. We hope to have answers and, if necessary, to produce a re-run "snapshot" in the next few weeks. TikTok is not refusing to comply—it simply takes time.

Your requests for multiple "snapshots," however, goes beyond what the Court ordered. That order specified one "snapshot." At no point in the parties' discussions or briefing on this matter, did Plaintiffs identify the need for multiple "snapshots" nor did the Court specify what those different versions would be. The November 27 order certainly says nothing about a separate production of "raw" or "generated" snapshots. Data that is sent to TikTok undergoes automatic cleaning, validation, quality control, de-duplication and aggregation of event data—that data can then be queried or placed in reports.

TikTok does not use the "raw" unprocessed data and it is not clear why Plaintiffs need a "snapshot"

of the data in that form. Although we do not believe it is required by the Court's order, we will try to produce a "raw" version.

The request for a snapshot of "generated" data, however, makes no sense. There is no "generated" data in the sense you seek and it is not a part of TikTok's automated processing. In yesterday's discussions, your focus seemed to concern instead the "use" of the data. Any routine use is covered by other discovery requests and TikTok has already produced samples of the types of reports advertisers may see. TikTok has no "snapshot" for any ad hoc queries of the data.

Needless to say, we believe there is no merit nor reason for a motion to compel at this point. We hope to address the data processing questions in the near future and to get you a version of the "raw" data.

Kind regards,
Sophie

WILSON SONSINI

Sophia (Sophie) Mancall-Bitel

(she/her)

direct: 323.210.2993

mobile: 310.709.6432

smancallbitel@wsgr.com

Wilson Sonsini Goodrich & Rosati

1900 Avenue of the Stars, 28th Floor
Los Angeles, CA 90067

www.wsgr.com



From: Gloria Park <GPark@susmangodfrey.com>

Sent: Sunday, January 14, 2024 2:57 PM

To: Mancall-Bitel, Sophie <smancallbitel@wsgr.com>; Hsu, Sarah <sarah.hsu@wsgr.com>;
Christopher J. Lee <cleee@birdmarella.com>; aweibell@mayerbrown.com

Cc: Ekwan E. Rhaw <erhow@birdmarella.com>; Marc E. Masters <mmasters@birdmarella.com>;
Jonathan Rotter <jrotter@glancylaw.com>; kwolke@glancylaw.com; glinkh@glancylaw.com; Kalpana
Srinivasan <ksrinivasan@SusmanGodfrey.com>; Steven Sklaver <ssklaver@SusmanGodfrey.com>;
Michael Gervais <MGervais@susmangodfrey.com>; Greg Fisk <GFisk@susmangodfrey.com>;
Nicholas Loaiza <NLoaiza@susmangodfrey.com>; Jih, Victor <vjih@wsgr.com>; Yin, Kelly
<kyin@wsgr.com>; John McCauley <JMcCauley@susmangodfrey.com>; Gloria Park
<GPark@susmangodfrey.com>

Subject: RE: Griffith v. TikTok - Meet and Confer on Pltfs' Motion to Enforce Court's Order

EXT - gpark@susmangodfrey.com
--

Counsel,

TikTok's reading of the Court's order is inconsistent with the parties' briefing on the issue, which expressly stated that "a sample of non-TikTok user data that Defendants collect, generate, and process on a single day" encompasses the following: "not just the non-TikTok user data that is *collected* on a single day but also such data that is *generated* or *processed* on a single day. The request covers all data that is generated (*e.g.*, new data created by combining non-TikTok user data collected with other information) and processed (*e.g.*, all copies of the data that is initially collected for downstream uses)." Dkt. 77. TikTok's reading of the Court's order "as requiring one snapshot of the data table containing event-level Pixel and Events API data that has been collected and processed, and from which aggregated analyses may be generated from time to time" is unsupported and confirms Plaintiffs' serious concerns about TikTok's failure to comply with the Court's order. Even more concerning is the fact that Plaintiffs laid out our reading of the scope of the Court's order in our December 15 email. If Defendants had a good-faith disagreement about that scope, they should have flagged the disagreement promptly, rather than waiting for a month and providing a belated, retroactive interpretation only after Plaintiffs expressed their plan to move to enforce the order.

As the record reflects, TikTok produced the initial data on December 11, and Plaintiffs analyzed the data within days and followed up with concerns about its deficiency on December 15. In the month since then, Defendants have failed to address a single question that Plaintiffs have raised. While we appreciate your position that producing the data is "not as simple as pushing a button," it is unclear why answering basic questions (like why there are redactions in the production and whether Defendants can provide descriptions of the 121 data fields) should take over a month.

Finally, as you know, this one-day sample data isn't just important in its own right but also informs other outstanding discovery disputes. For instance, many of the data fields reflected in the one-day sample data refers to Pangle, notwithstanding Defendants' representation that they do not use data collected through the Pixel and Events API for any purpose related to Pangle.

The parties have a scheduled meet and confer on Wednesday, January 17. Please be prepared to discuss this issue on that call.

Best,
Gloria

From: Mancall-Bitel, Sophie <smancallbitel@wsgr.com>

Sent: Friday, January 12, 2024 5:12 PM

To: Gloria Park <GPark@susmangodfrey.com>; Hsu, Sarah <sarah.hsu@wsgr.com>; Christopher J. Lee <clee@birdmarella.com>; aweibell@mayerbrown.com

Cc: Ekwan E. Rhow <erhow@birdmarella.com>; Marc E. Masters <mmasters@birdmarella.com>; Jonathan Rotter <jrotter@glancylaw.com>; kwolke@glancylaw.com; glinkh@glancylaw.com; Kalpana Srinivasan <ksrinivasan@SusmanGodfrey.com>; Steven Sklaver <ssklaver@SusmanGodfrey.com>; Michael Gervais <MGervais@susmangodfrey.com>; Greg Fisk <GFisk@susmangodfrey.com>; Nicholas Loaiza <NLoaiza@susmangodfrey.com>; Jih, Victor <vjih@wsgr.com>; Yin, Kelly <kyin@wsgr.com>; John McCauley <JMcCauley@susmangodfrey.com>

Subject: RE: Griffith v. TikTok - Meet and Confer on Pltfs' Motion to Enforce Court's Order

EXTERNAL Email

Gloria:

TikTok strongly disagrees that its production of a 24-hour data table snapshot does not meet the Court's November 27 order. We read the Court's order as requiring one snapshot of the data table containing event-level Pixel and Events API data that has been collected and processed, and from which aggregated analyses may be generated from time to time. That is what TikTok produced. In practicality, we do not believe a sample of raw, pre-processed data would provide Plaintiffs any meaningful new information and are happy to discuss this on a meet-and-confer.

With respect to Plaintiffs' other questions, as we have previously explained, the process of identifying and querying 24 hours' worth of unmatched Pixel and Events API data is complex, requiring input from multiple people at the company. It is not as simple as pushing a button. Given this complexity, it has taken our client time to work through your follow-up questions.

We would appreciate scheduling a meet-and-confer towards the end of next week in the hopes that we can reach resolution and focus on the outstanding discovery on both sides.

Kind regards,
Sophie

WILSON SONSINI

Sophia (Sophie) Mancall-Bitel

(she/her)

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Wilson Sonsini Goodrich & Rosati

1900 Avenue of the Stars, 28th Floor
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From: Gloria Park <GPark@susmangodfrey.com>

Sent: Thursday, January 11, 2024 11:18 AM

To: Mancall-Bitel, Sophie <smancallbitel@wsgr.com>; Hsu, Sarah <sarah.hsu@wsgr.com>;
Christopher J. Lee <cleee@birdmarella.com>; aweibell@mayerbrown.com

Cc: Ekwan E. Rhow <erhow@birdmarella.com>; Marc E. Masters <mmasters@birdmarella.com>;
Jonathan Rotter <jrotter@glancylaw.com>; kwolke@glancylaw.com; glinkh@glancylaw.com; Kalpana
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<kyin@wsgr.com>; John McCauley <JMcCauley@susmangodfrey.com>; Gloria Park
<GPark@susmangodfrey.com>

Subject: Griffith v. TikTok - Meet and Confer on Pltfs' Motion to Enforce Court's Order

EXT - gpark@susmangodfrey.com

Counsel,

Plaintiffs plan to file a motion to enforce the Court's November 27, 2023 order requiring Defendants to produce, in part, a sample of non-TikTok user data that Defendants collect, generate, and process on a single day. Dkt. 74. The Court ordered Defendants to produce this data by December 11, 2023. The data that Defendants produced on that day is deficient, at least for the reasons outlined in my December 15 email. To date, Defendants have failed to produce supplemental data or even to answer the questions that Plaintiffs asked about the deficiencies in the month since the production. Defendants are in violation of the Court's order. Please provide your availability this week or early next week to meet and confer on Plaintiffs' motion.

Best,
Gloria

Gloria Park | **Susman Godfrey**

o. 212.729.2029 | c. 917.340.3695

1301 Avenue of the Americas, 32nd Fl. | New York, NY 10019

gpark@susmangodfrey.com

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EXHIBIT 6

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*Attorneys for Defendants
TikTok Inc. and ByteDance Inc.*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BERNADINE GRIFFITH;
PATRICIA SHIH; RHONDA
IRVIN; JACOB WATTERS,
individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

TIKTOK INC., et al.,

Defendants.

Case No. 5:23-cv-0964-SB-E

**DEFENDANTS TIKTOK INC. AND
BYTEDANCE INC.'S AMENDED
RESPONSES AND OBJECTIONS TO
PLAINTIFFS' THIRD SET OF
INTERROGATORIES (NO. 15)**

Judge: Hon. Stanley Blumenfeld Jr.

PROPOUNDING PARTY: PLAINTIFFS BERNADINE GRIFFITH ET. AL.

RESPONDING PARTY: DEFENDANTS TIKTOK INC. AND BYTEDANCE
INC.

SET NO.: THREE (NO. 15)

Pursuant to Rules 26 and Rule 33 of the Federal Rules of Civil Procedure, Defendants TikTok Inc. (“TikTok”) and ByteDance Inc. (“ByteDance”), by and through their attorneys, submit the following amended responses and objections to the Third Set of Interrogatories (“Interrogatories”) served by Plaintiffs on November 30, 2023.¹ The following General Objections apply to each and every separately numbered Interrogatory and are incorporated therein by reference as if set forth in full:

GENERAL OBJECTIONS

TikTok makes the following General Objections, whether or not separately set forth in response to each Interrogatory, Definition or Instruction. Although TikTok may repeat some of these General Objections in a specific response, because they are particularly applicable, such specific citations are not to be construed as a waiver of any other General Objections applicable to the Interrogatory. These General Objections are incorporated in each response to each Interrogatory as if fully set forth in each of the individual responses below.

1. TikTok objects to the Interrogatories to the extent they purport to impose obligations beyond those required under the Federal Rules of Civil Procedure or the Local Rules of the United States District Court for the Central District of California, or any order by this Court.

2. TikTok objects to the Interrogatories to the extent they seek information not within TikTok’s possession, custody, or control, or that cannot be found in the course of a reasonable search. Any agreement to provide responsive information is an agreement to produce information within TikTok’s possession, custody, or control and that can be found in the course of a reasonable search,

¹ Plaintiffs served the Interrogatories on both TikTok and ByteDance. ByteDance incorporates the objections herein in full. However, because the Interrogatories appear to seek information that would reside in TikTok’s possession, if anywhere, the remainder of the written objections and responses to the Interrogatories are focused on TikTok specifically.

1 subject to any objections stated herein; such an agreement does not necessarily
2 mean that there is responsive information or that TikTok will be able to find it after
3 a reasonable search.

4 3. TikTok objects to the Interrogatories to the extent they lack a
5 reasonably limited temporal scope. Such Interrogatories are overly broad, unduly
6 burdensome, and seek discovery not relevant to a party's claim or defense or
7 proportional to the needs of the case.

8 4. TikTok objects to the Interrogatories to the extent that they seek
9 information protected from disclosure by the attorney-client privilege, the work
10 product doctrine, the self-critical analysis privilege, the consulting expert privilege,
11 any applicable joint defense privileges, any applicable common interest privileges,
12 and/or any other privileges and immunities ("Privileged Information"). Any
13 inadvertent disclosure of such information shall not be deemed a waiver of any
14 such privilege, and TikTok expressly requests that the receiving party immediately
15 return and not make use of any inadvertently disclosed privileged information. In
16 particular, TikTok objects to paragraph 5 of the Instructions on the grounds that
17 they seek information that is not relevant to the assertion of privilege, is unduly
18 burdensome, and is harassing. TikTok also objects to the Interrogatories to the
19 extent they seek to require the collection, production or logging of the work
20 product of or attorney-client privileged communications with outside counsel hired
21 in connection with this litigation or duplicate files maintained by outside counsel.

22 5. TikTok objects to the Interrogatories to the extent they seek
23 confidential, trade secret, or proprietary information ("Confidential Information").
24 TikTok will produce its Confidential Information subject to the terms of the
25 parties' protective order entered by the Court. TikTok also may not be able to
26 produce Confidential Information belonging to third parties or that is subject to
27 confidentiality obligations without a court order or prior notice to the affected third
28 party.

1 6. TikTok objects to the Interrogatories to the extent they seek personal
2 private information that would impinge on any protected right to privacy of
3 individuals, including any statutory, constitutional, or common law right of privacy
4 (“Private Information”). TikTok reserves the right to redact such Private
5 Information.

6 7. TikTok objects to the Interrogatories to the extent that they are vague,
7 ambiguous, indefinite, unintelligible, or otherwise unclear as to the information
8 they seek.

9 8. In complying with the Interrogatories, TikTok does not intend to
10 waive any position or objection, including, but not limited to, any objection to the
11 competency, relevance, materiality, or admissibility of any of the requested
12 information, TikTok’s responses, or their subject matter. Further, no admissions
13 (incidental, implied, or otherwise) are intended by any such responses, including,
14 without limitation, that any statement or characterization in the Interrogatories is
15 accurate or complete. In addition, the fact that TikTok may comply with the
16 Interrogatories should not be taken as an admission that TikTok accepts or admits
17 the existence of any information presumed by the Interrogatories. The fact that
18 TikTok may comply with part or all of the Interrogatories is not intended to be, and
19 shall not be construed to be, a waiver by TikTok of any part of any objection.

20 9. TikTok reserves the right to assert additional objections as appropriate
21 and to supplement these objections and responses if TikTok deems necessary. The
22 subject matter of the Interrogatories is under continuing investigation. TikTok
23 expressly reserves the right to use or rely upon information not provided in
24 response to the Interrogatories if such information is uncovered during the course
25 of its ongoing investigation, and TikTok expressly reserves the right pursuant to
26 Fed. R. Civ. P. 26(e) to change or modify any of the following responses as it
27 becomes aware of new knowledge relevant to the Interrogatories and/or additional
28 facts are ascertained, legal research is completed, or contentions are made. TikTok

1 also reserves the right to supplement its response to each Interrogatory that is
 2 deemed premature, not relevant or beyond the scope of discovery when and if they
 3 become timely, relevant, or fall within the bounds of discovery, as set forth by the
 4 rules and orders of this Court.

5 **OBJECTIONS TO THE DEFINITIONS**

6 1. TikTok objects to the definition of “TikTok” to the extent it purports
 7 to encompass more than TikTok Inc.

8 2. TikTok objects to the definition of “ByteDance” to the extent that it
 9 purports to encompass more than ByteDance Inc.

10 3. TikTok objects to the definitions of “You,” “Your,” and “Defendants”
 11 because these terms are overly broad, vague, and ambiguous, and purport to
 12 encompass numerous persons and entities. TikTok will interpret “You,” “Your,” or
 13 “Defendants” to mean TikTok Inc., its direct and indirect subsidiaries, officers,
 14 directors, employees, and agents acting on behalf of TikTok.

15 4. TikTok objects to the definition of “TikTok SDK.” Plaintiffs refer to a
 16 “TikTok SDK,” but TikTok does not actually offer an SDK for use by websites.
 17 The only tools it offers to advertisers are a Pixel and an Events API. The Pixel can
 18 be installed on websites. The Event API is not installed on or used by websites.

19 **AMENDED RESPONSES TO INTERROGATORIES**

20 **INTERROGATORY NO. 15:**

21 Please describe in detail the current operation of Pangle, Global App Bundle
 22 (“GAB”), and/or any similar technology that facilitates ad placement on non-
 23 TikTok Websites and/or apps (collectively, “the Products”), including (a) whether
 24 there has been any alpha release and/or beta release of the Products, (b) the
 25 geographical segmentation of the Products, including whether advertisers operating
 26 from a Pangle- or GAB-supported jurisdiction like Mexico or Canada can advertise
 27 to a person located in the U.S. and whether a U.S. resident who temporarily travels
 28 to a Pangle- or GAB-supported jurisdiction outside the U.S. can be served ads via

1 the Products or via advertisers using the Products while in that jurisdiction; and (c)
 2 whether and how non-TikTok user Data collected, generated, and/or processed
 3 through the TikTok SDK (including Data that results from Defendants' subsequent
 4 aggregation and/or analysis of non-TikTok user Data collected, generated, and/or
 5 processed through the TikTok SDK) have been or currently are used in any way
 6 related to the Products.

7 **AMENDED RESPONSE TO INTERROGATORY NO. 15:**

8 TikTok objects to the Interrogatory to the extent the information sought
 9 contains Confidential Information or Privileged Information. TikTok objects to the
 10 Interrogatory because the phrase "similar technology" is vague. TikTok objects to
 11 the extent the Interrogatory is duplicative of Request No. 82. TikTok objects to the
 12 Interrogatory because it purports to seek only information regarding Pangle and the
 13 Global App Bundle, which do not allow advertisers to display ads off of the
 14 TikTok platform in the United States, and thus it seeks only information that is
 15 irrelevant to any claim or defense.

16 TikTok will not respond to this Interrogatory except to state that TikTok
 17 does not use unmatched Pixel or Events API data for any purposes relating to
 18 Pangle or Global App Bundle.

19
 20 Dated: January 19, 2024

21 WILSON SONSINI GOODRICH & ROSATI
 22 Professional Corporation

23 By: /s/ Sophia M. Mancall-Bitel
 24 Sophia M. Mancall-Bitel

25 *Attorneys for Defendants*
 26 *TikTok Inc. and ByteDance Inc.*
 27
 28

VERIFICATION

I, Dan Kirchgessner, declare:

I work for TikTok Inc. My title is the Global Product Strategy and Operations Lead. I am authorized to make this verification on behalf of TikTok Inc. and ByteDance Inc. I have read Defendants TikTok Inc. and ByteDance Inc.'s Amended Responses and Objections to Plaintiffs' Third Set of Interrogatories (No. 15), and the matters set forth herein are true to the best of my personal knowledge (including based on my review of company documents and discussions with others at TikTok), information, and belief.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on January 19, 2024

By: 

Dan Kirchgessner

CERTIFICATE OF SERVICE

I certify that on January 19, 2024, I caused a copy of the foregoing Defendants TikTok Inc. and ByteDance Inc.'s Amended Responses and Objections to Plaintiffs' Third Set of Interrogatories (No. 15) to be delivered via email, pursuant to the parties' mutual agreement to accept service via email, to the following individuals:

Ekwan E. Rhow (CA SBN 174604)
 Marc E. Masters (CA SBN 208375)
 Christopher J. Lee (CA SBN 322140)
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 Nicholas Loaiza
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 gfisk@susmangodfrey.com
 NLoaiza@susmangodfrey.com

1 Dated: January 19, 2024

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

2
3
4 By: /s/ Alexandra Bautista

Alexandra Bautista

5
6 *For Defendants*

TIKTOK INC. and BYTEDANCE INC.

EXHIBIT 7

From: [Yin, Kelly](#)
To: [Gloria Park](#); [Mancall-Bitel, Sophia](#); [Hsu, Sarah](#); [Christopher J. Lee](#); [aweibell@mayerbrown.com](#)
Cc: [Ekwon E. Rhow](#); [Marc E. Masters](#); [Jonathan Rotter](#); [kwolke@glancylaw.com](#); [glinkh@glancylaw.com](#); [Kalpana Srinivasan](#); [Steven Sklaver](#); [Michael Gervais](#); [Greg Fisk](#); [Nicholas Loaiza](#); [Jih, Victor](#); [John McCauley](#)
Subject: RE: Griffith v. TikTok - Meet and Confer on Pltfs' Motion to Enforce Court's Order
Date: Friday, January 26, 2024 7:38:02 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

EXTERNAL Email

Counsel:

TikTok is working as quickly as possible to produce a new snapshot of the processed data that addresses Plaintiffs' concerns. As you know, this is a complex and technologically difficult process. TikTok is also working as quickly as possible to produce a snapshot of the raw data. TikTok has offered to produce the raw data snapshot in order to reach a resolution of Plaintiffs' concerns, although we continue to believe that it will not be useful to Plaintiffs and is not required by the Court's order.

We are working on the descriptions for the data fields you identified as well as answers to the questions you raised for the specified data fields. We intend to provide those to you in the next couple weeks.

On "use" of the Pixel, the Court's order plainly does not encompass Plaintiffs' new interpretation of "generated" data, which Plaintiffs now propose covers the names of all the processes, technical documents, sample outputs of every single "use," PRDs, release docs, etc. To the extent that those documents are covered by other RFPs, as Plaintiffs suggest, then you already have our position on them. That said, in aid of discovery, TikTok will agree to produce samples of aggregated reports for data pertaining to the websites identified in the First Amended Complaint. That is currently in progress.

Regards,
 Kelly

Kelly H. Yin | Wilson Sonsini Goodrich & Rosati
 mobile: 323.547.3985 | kyin@wsgr.com

From: Gloria Park <GPark@susmangodfrey.com>
Sent: Thursday, January 18, 2024 11:09 AM
To: [Mancall-Bitel, Sophie](mailto:smancallbitel@wsgr.com) <smancallbitel@wsgr.com>; [Hsu, Sarah](mailto:sarah.hsu@wsgr.com) <sarah.hsu@wsgr.com>; [Christopher J. Lee](mailto:clee@birdmarella.com) <clee@birdmarella.com>; aweibell@mayerbrown.com
Cc: [Ekwon E. Rhow](mailto:erhow@birdmarella.com) <erhow@birdmarella.com>; [Marc E. Masters](mailto:mmasters@birdmarella.com) <mmasters@birdmarella.com>; [Jonathan Rotter](mailto:jrotter@glancylaw.com) <jrotter@glancylaw.com>; kwolke@glancylaw.com; glinkh@glancylaw.com; [Kalpana Srinivasan](mailto:ksrinivasan@SusmanGodfrey.com) <ksrinivasan@SusmanGodfrey.com>; [Steven Sklaver](mailto:ssklaver@SusmanGodfrey.com) <ssklaver@SusmanGodfrey.com>; [Michael Gervais](mailto:MGervais@susmangodfrey.com) <MGervais@susmangodfrey.com>; [Greg Fisk](mailto:GFisk@susmangodfrey.com) <GFisk@susmangodfrey.com>;

Nicholas Loaiza <NLoaiza@susmangodfrey.com>; Jih, Victor <vjih@wsgr.com>; Yin, Kelly <kyin@wsgr.com>; John McCauley <JMcCauley@susmangodfrey.com>; Gloria Park <GPark@susmangodfrey.com>

Subject: RE: Griffith v. TikTok - Meet and Confer on Pltfs' Motion to Enforce Court's Order

EXT - gpark@susmangodfrey.com

Counsel,

We write to memorialize and follow up on yesterday's meet and confer on, among other things, the deficiencies in Defendants' production of one-day sample data.

As the record reflects, on November 27, 2023, the Court ordered Defendants to produce, by December 11, 2023, "a sample of non-TikTok user data that Defendants collect, generate, and process on a single day." The parties' briefing made clear that this encompasses the following: "not just the non-TikTok user data that is *collected* on a single day but also such data that is *generated* or *processed* on a single day. The request covers all data that is generated (*e.g.*, new data created by combining non-TikTok user data collected with other information) and processed (*e.g.*, all copies of the data that is initially collected for downstream uses)."

On December 11, Defendants produced three spreadsheets. On December 15, Plaintiffs followed up flagging numerous deficiencies in Defendants' production, including (1) that Defendants failed to produce any "generated" data, (2) that Defendants produced only a subset of data collected from some iOS devices and some desktop devices and produced only data from standard events and no custom events, and (3) that over half of the 121 data fields contain "Null," "0" or "blank" values. Plaintiffs further asked whether Defendants redacted the data during the normal course of business or for this litigation and requested descriptions of the 121 data fields in light of the heavy redactions.

Despite numerous follow-ups since December 15, Defendants did not produce supplemental data or even answer the questions presented in the December 15 email. On January 12, Defendants for the first time offered their own interpretation of the Court order, asserting that the order only "requir[es] one snapshot of the data table containing event-level Pixel and Events API data that

has been collected and processed, and from which aggregated analyses may be generated from time to time.” While Plaintiffs strongly disagree with this interpretation, even under Defendants’ own interpretation, their production is severely deficient for the reasons articulated in our December 15 email.

On yesterday’s meet and confer, Defendants represented that they are working on “re-querying” the data to provide a supplemental production that includes data from all devices and not just those using iOS, data from all events and not just standard events, and data that does not have fields nulled or zeroed out. Defendants however would not provide any specific deadline by which they would do so, noting that it may take a “few weeks” but not committing even to that timeframe. The Court’s order required Defendants to produce this data by December 11, and Plaintiffs reserve all rights related to Defendants’ delay and failure to abide by the Court-imposed deadline.

Defendants further declined to produce descriptions of the 121 data fields, noting that such descriptions will not be necessary once Defendants get around to producing the supplemental data but once again without providing any timeframe by which they would do so. Defendants also represented that the data fields are “self-explanatory” and asked whether there are specific data fields on which Plaintiffs would like more information. These are the subset of fields on which we request more information by no later than **Friday, January 26**:

- “event” – Does this field include both custom and standard events? How do these events map to publicly disclosed events in <https://ads.tiktok.com/help/article/standard-events-parameters?lang=en>?
- “user_type” – This field contains numerical values. What do the numerical values mean?
- “country”, “city”, “locale” – Are these fields locations of the user or advertiser?
- Please provide a full list of sub-fields for the following: “properties”, “predicted_properties”, “intelligent_properties”
- Please provide an explanation or description of the following fields: “pixel_inspection”, “received_dc”, “tt_id_experimental_users”, “idc”,

“is_compliant”, “is_onsite”, “is_standard”, “is_user_level”, “uid”,
 “union_uuid”, “req_id”, “clue_id”, “vid”, “gab_am_users”,
 “pm_pc_users”, “auto_email”, “auto_phone_number”,
 “collector_version”, “compliance_tags”, “detection_uv”,
 “is_event_inferred”, “flags_version”, “is_first”, “orit”, “rit”,
 “should_counted”, “tenant”, “product_level3_id”, “product_level5_id”,
 “pangle_am_matched_users”, “pangle_cookie_users”,
 “pangle_id_experimental_users”, “pangle_pm_matched_users”,
 “pangle_pm_users”

With regard to the portion of the Court’s order that required Defendants to produce data generated on a single day, Defendants maintained on the call that the order does not require Defendants to produce documents showing how they combined the data collected with other information to generate new data or to make use of the collected data. Defendants also asked whether it would be sufficient if they produced a few samples of the type of aggregated analysis that is run from the non-user data that is collected.

Defendants’ proposal is insufficient because Defendants have stated to the Court that they do not merely conduct “aggregated analysis” with non-user data. Rather, Defendants also use the data for machine learning and algorithm improvement. Accordingly, Plaintiffs believe that the Court order encompasses the production of at least the following:

- All the processing pipelines after the non-user data is collected, including (1) the pipeline names, names of machine learning algorithms, and names of aggregation tools, (2) technical documentation that shows how non-user data is used by these pipelines (for example, training machine learning algorithms, how data is aggregated) and what the results are, and (3) a sample of the output data or results from each pipeline; and
- Product requirement documents, technical design documents (including machine learning models and training strategies), and product and/or feature launch documents that reflect how Defendants use the non-user data.

Of course, these categories of documents are also encompassed in other discovery requests that Plaintiffs have served and should be produced even if Defendants maintain that they are not covered by the Court’s November 27

order. To the extent that Defendants do not have documentary evidence of the above, please so confirm.

Best,
Gloria

From: Mancall-Bitel, Sophie <smancallbitel@wsgr.com>

Sent: Thursday, January 18, 2024 12:33 PM

To: Gloria Park <GPark@susmangodfrey.com>; Hsu, Sarah <sarah.hsu@wsgr.com>; Christopher J. Lee <clee@birdmarella.com>; aweibell@mayerbrown.com

Cc: Ekwan E. Rhow <erhow@birdmarella.com>; Marc E. Masters <mmasters@birdmarella.com>; Jonathan Rotter <jrotter@glancylaw.com>; kwolke@glancylaw.com; glinkh@glancylaw.com; Kalpana Srinivasan <ksrinivasan@SusmanGodfrey.com>; Steven Sklaver <ssklaver@SusmanGodfrey.com>; Michael Gervais <MGervais@susmangodfrey.com>; Greg Fisk <GFisk@susmangodfrey.com>; Nicholas Loaiza <NLoaiza@susmangodfrey.com>; Jih, Victor <vjih@wsgr.com>; Yin, Kelly <kyin@wsgr.com>; John McCauley <JMcCauley@susmangodfrey.com>

Subject: RE: Griffith v. TikTok - Meet and Confer on Pltfs' Motion to Enforce Court's Order

EXTERNAL Email

Gloria:

But for a few data processing questions, TikTok has already complied with the Court's November 27 order.

You asked about the fields with "null," "0" or blank fields and about the scope of included devices/events. TikTok has been working on those questions, which came in right before the holidays. As you know, the production of a "one-day snapshot" is not something TikTok does as part of its normal business processes; it has required it to specify new queries, create tools, and implement them. TikTok is treating this as a high-priority request, but it requires a significant amount of human-hours and coordination across different groups to address. We hope to have answers and, if necessary, to produce a re-run "snapshot" in the next few weeks. TikTok is not refusing to comply—it simply takes time.

Your requests for multiple "snapshots," however, goes beyond what the Court ordered. That order specified one "snapshot." At no point in the parties' discussions or briefing on this matter, did Plaintiffs identify the need for multiple "snapshots" nor did the Court specify what those different versions would be. The November 27 order certainly says nothing about a separate production of "raw" or "generated" snapshots. Data that is sent to TikTok undergoes automatic cleaning, validation, quality control, de-duplication and aggregation of event data—that data can then be queried or placed in reports.

TikTok does not use the "raw" unprocessed data and it is not clear why Plaintiffs need a "snapshot" of the data in that form. Although we do not believe it is required by the Court's order, we will try to

produce a “raw” version.

The request for a snapshot of “generated” data, however, makes no sense. There is no “generated” data in the sense you seek and it is not a part of TikTok’s automated processing. In yesterday’s discussions, your focus seemed to concern instead the “use” of the data. Any routine use is covered by other discovery requests and TikTok has already produced samples of the types of reports advertisers may see. TikTok has no “snapshot” for any ad hoc queries of the data.

Needless to say, we believe there is no merit nor reason for a motion to compel at this point. We hope to address the data processing questions in the near future and to get you a version of the “raw” data.

Kind regards,
Sophie

WILSON SONSINI

Sophia (Sophie) Mancall-Bitel

(she/her)

direct: 323.210.2993

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1900 Avenue of the Stars, 28th Floor
Los Angeles, CA 90067

www.wsgr.com



From: Gloria Park <GPark@susmangodfrey.com>

Sent: Sunday, January 14, 2024 2:57 PM

To: Mancall-Bitel, Sophie <smancallbitel@wsgr.com>; Hsu, Sarah <sarah.hsu@wsgr.com>; Christopher J. Lee <clee@birdmarella.com>; aweibell@mayerbrown.com

Cc: Ekwan E. Rhaw <erhow@birdmarella.com>; Marc E. Masters <mmasters@birdmarella.com>; Jonathan Rotter <jrotter@glancylaw.com>; kwolke@glancylaw.com; glinkh@glancylaw.com; Kalpana Srinivasan <ksrinivasan@SusmanGodfrey.com>; Steven Sklaver <ssklaver@SusmanGodfrey.com>; Michael Gervais <MGervais@susmangodfrey.com>; Greg Fisk <GFisk@susmangodfrey.com>; Nicholas Loaiza <NLoaiza@susmangodfrey.com>; Jih, Victor <vjih@wsgr.com>; Yin, Kelly <kyin@wsgr.com>; John McCauley <JMcCauley@susmangodfrey.com>; Gloria Park <GPark@susmangodfrey.com>

Subject: RE: Griffith v. TikTok - Meet and Confer on Pltfs' Motion to Enforce Court's Order

EXT - gpark@susmangodfrey.com
--

Counsel,

TikTok's reading of the Court's order is inconsistent with the parties' briefing on the issue, which expressly stated that "a sample of non-TikTok user data that Defendants collect, generate, and process on a single day" encompasses the following: "not just the non-TikTok user data that is *collected* on a single day but also such data that is *generated* or *processed* on a single day. The request covers all data that is generated (*e.g.*, new data created by combining non-TikTok user data collected with other information) and processed (*e.g.*, all copies of the data that is initially collected for downstream uses)." Dkt. 77. TikTok's reading of the Court's order "as requiring one snapshot of the data table containing event-level Pixel and Events API data that has been collected and processed, and from which aggregated analyses may be generated from time to time" is unsupported and confirms Plaintiffs' serious concerns about TikTok's failure to comply with the Court's order. Even more concerning is the fact that Plaintiffs laid out our reading of the scope of the Court's order in our December 15 email. If Defendants had a good-faith disagreement about that scope, they should have flagged the disagreement promptly, rather than waiting for a month and providing a belated, retroactive interpretation only after Plaintiffs expressed their plan to move to enforce the order.

As the record reflects, TikTok produced the initial data on December 11, and Plaintiffs analyzed the data within days and followed up with concerns about its deficiency on December 15. In the month since then, Defendants have failed to address a single question that Plaintiffs have raised. While we appreciate your position that producing the data is "not as simple as pushing a button," it is unclear why answering basic questions (like why there are redactions in the production and whether Defendants can provide descriptions of the 121 data fields) should take over a month.

Finally, as you know, this one-day sample data isn't just important in its own right but also informs other outstanding discovery disputes. For instance, many of the data fields reflected in the one-day sample data refers to Pangle, notwithstanding Defendants' representation that they do not use data collected through the Pixel and Events API for any purpose related to Pangle.

The parties have a scheduled meet and confer on Wednesday, January 17. Please be prepared to discuss this issue on that call.

Best,
Gloria

From: Mancall-Bitel, Sophie <smancallbitel@wsgr.com>

Sent: Friday, January 12, 2024 5:12 PM

To: Gloria Park <GPark@susmangodfrey.com>; Hsu, Sarah <sarah.hsu@wsgr.com>; Christopher J. Lee <clee@birdmarella.com>; aweibell@mayerbrown.com

Cc: Ekwan E. Rhow <erhow@birdmarella.com>; Marc E. Masters <mmasters@birdmarella.com>; Jonathan Rotter <jrotter@glancylaw.com>; kwolke@glancylaw.com; glinkh@glancylaw.com; Kalpana Srinivasan <ksrinivasan@SusmanGodfrey.com>; Steven Sklaver <ssklaver@SusmanGodfrey.com>; Michael Gervais <MGervais@susmangodfrey.com>; Greg Fisk <GFisk@susmangodfrey.com>; Nicholas Loaiza <NLoaiza@susmangodfrey.com>; Jih, Victor <vjih@wsgr.com>; Yin, Kelly <kyin@wsgr.com>; John McCauley <JMcCauley@susmangodfrey.com>

Subject: RE: Griffith v. TikTok - Meet and Confer on Pltfs' Motion to Enforce Court's Order

EXTERNAL Email

Gloria:

TikTok strongly disagrees that its production of a 24-hour data table snapshot does not meet the Court's November 27 order. We read the Court's order as requiring one snapshot of the data table containing event-level Pixel and Events API data that has been collected and processed, and from which aggregated analyses may be generated from time to time. That is what TikTok produced. In practicality, we do not believe a sample of raw, pre-processed data would provide Plaintiffs any meaningful new information and are happy to discuss this on a meet-and-confer.

With respect to Plaintiffs' other questions, as we have previously explained, the process of identifying and querying 24 hours' worth of unmatched Pixel and Events API data is complex, requiring input from multiple people at the company. It is not as simple as pushing a button. Given this complexity, it has taken our client time to work through your follow-up questions.

We would appreciate scheduling a meet-and-confer towards the end of next week in the hopes that we can reach resolution and focus on the outstanding discovery on both sides.

Kind regards,
Sophie

WILSON SONSINI

Sophia (Sophie) Mancall-Bitel

(she/her)

direct: 323.210.2993

mobile: 310.709.6432

smancallbitel@wsgr.com

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From: Gloria Park <GPark@susmangodfrey.com>

Sent: Thursday, January 11, 2024 11:18 AM

To: Mancall-Bitel, Sophie <smancallbitel@wsgr.com>; Hsu, Sarah <sarah.hsu@wsgr.com>;
Christopher J. Lee <clee@birdmarella.com>; aweibell@mayerbrown.com

Cc: Ekwan E. Rhow <erhow@birdmarella.com>; Marc E. Masters <mmasters@birdmarella.com>;
Jonathan Rotter <jrotter@glancylaw.com>; kwolke@glancylaw.com; glinkh@glancylaw.com; Kalpana
Srinivasan <ksrinivasan@SusmanGodfrey.com>; Steven Sklaver <ssklaver@SusmanGodfrey.com>;
Michael Gervais <MGervais@susmangodfrey.com>; Greg Fisk <GFisk@susmangodfrey.com>;
Nicholas Loaiza <NLoaiza@susmangodfrey.com>; Jih, Victor <vjih@wsgr.com>; Yin, Kelly
<kyin@wsgr.com>; John McCauley <JMcCauley@susmangodfrey.com>; Gloria Park
<GPark@susmangodfrey.com>

Subject: Griffith v. TikTok - Meet and Confer on Pltfs' Motion to Enforce Court's Order

EXT - gpark@susmangodfrey.com

Counsel,

Plaintiffs plan to file a motion to enforce the Court's November 27, 2023 order requiring Defendants to produce, in part, a sample of non-TikTok user data that Defendants collect, generate, and process on a single day. Dkt. 74. The Court ordered Defendants to produce this data by December 11, 2023. The data that Defendants produced on that day is deficient, at least for the reasons outlined in my December 15 email. To date, Defendants have failed to produce supplemental data or even to answer the questions that Plaintiffs asked about the deficiencies in the month since the production. Defendants are in violation of the Court's order. Please provide your availability this week or early next week to meet and confer on Plaintiffs' motion.

Best,
Gloria

Gloria Park | **Susman Godfrey**

o. 212.729.2029 | c. 917.340.3695

1301 Avenue of the Americas, 32nd Fl. | New York, NY 10019

gpark@susmangodfrey.com

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EXHIBIT 8

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(EASTERN DIVISION - RIVERSIDE)

BERNADINE GRIFFITH,)	CASE NO: 5:23-cv-00964-SB-E
)	
Plaintiff,)	CIVIL
)	
vs.)	Los Angeles, California
)	
TIKTOK, INC, ET AL,)	Friday, October 20, 2023
)	
<u>Defendants.</u>)	(9:30 a.m. to 10:43 a.m.)

HEARING RE:

PLAINTIFF'S MOTION TO COMPEL DISCOVERY REGARDING WEBSITES
WITH TIKTOK SDK INSTALLED, DAMAGES CALCULATION, AND CUSTODIANS
[DKT.NO.50]

BEFORE THE HONORABLE CHARLES F. EICK,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES: SEE PAGE 2

Court Reporter [ECRO]: CourtSmart

Courtroom Deputy: Valencia Munroe

Transcribed by: Exceptional Reporting Services, Inc.
P.O. Box 8365
Corpus Christi, TX 78468
361 949-2988

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

APPEARANCES:

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For Defendants:

SOPHIA MANCALL-BITEL, ESQ.
VICTOR H. JIH, ESQ.
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1900 Avenue of the Stars
28th Floor
Los Angeles, CA 90067
424-446-6900

Los Angeles, California; Friday, October 20, 2023; 9:30 a.m.

(Call to Order)

THE CLERK: Calling Case Number EDCV 23-964-SB,
Bernadine Griffith versus TikTok, Inc., et al.

Counsel, please state your appearances.

MS. PARK: Good morning, Your Honor, Gloria Park of
Susman Godfrey for the Plaintiff.

THE COURT: Thank you.

MR. ROTTER: Good morning, Your Honor, Jonathan
Rotter of Glancy Prongay and Murray also for the Plaintiff.

THE COURT: Thank you.

MR. GERVAIS: Good morning, Your Honor, Michael
Gervais of Susman Godfrey for the Plaintiffs.

THE COURT: Thank you.

MR. JIH: Good morning, Your Honor, Victor Jih for
the Defendants.

THE COURT: Thank you.

MS. MANCALL-BITEL: Good morning, Your Honor, Sophia
Mancall-Bitel from Wilson Sonsini for the Defendants.

THE COURT: Thank you.

This matter is before the Court for a hearing on
Plaintiff's Motion to Compel. I've read all of the papers
filed in connection with the motion and I am prepared to hear
argument. First, for the moving party, please.

MS. PARK: Thank you, Your Honor, Gloria Park of

1 Susman Godfrey. Plaintiff seeks four categories of documents
2 in the motion to compel and as to all four categories,
3 Defendants have not disputed the relevance of the documents
4 sought. Instead, they complained that the discovery requests
5 are premature or burdensome or that they're working on it.

6 Respectfully, Your Honor, the requests are not
7 premature and in light of class certification motion that is
8 due in less than four months in early February, the Court
9 should order Defendants to produce these documents now.

10 **THE COURT:** Some of your requests are relevant only
11 to the class issues. Would you agree?

12 **MS. PARK:** Your Honor, by "class issues," do you mean
13 class certification issues?

14 **THE COURT:** Well, I mean, issues beyond the
15 Plaintiff's -- the named Plaintiff's individual claims.

16 **MS. PARK:** Your Honor, I think they're relevant both
17 to class issues and issues that go specifically to the named
18 Plaintiff.

19 **THE COURT:** But the scope of some of your requests
20 would be relevant only to class issues, correct? For example,
21 asking for a list of websites that are customers of TikTok that
22 the named Plaintiff never visited.

23 **MS. PARK:** Your Honor, respectfully, we think that
24 actually is relevant to the named Plaintiff's allegations and
25 here is why. The full list of websites is relevant -- directly

1 relevant to learn what other websites Defendants have
2 intercepted data on the named Plaintiff from. So we know about
3 the three that are named in the complaint but given --

4 **THE COURT:** All right. Then let me rephrase my
5 question. Asking for information concerning websites that the
6 named Plaintiff knows she never visited.

7 **MS. PARK:** Yes, Your Honor. We -- it's our
8 understanding that the TikTok SDK is on hundreds of thousands
9 of websites. And, yes, we don't know that the named Plaintiff
10 has visited all hundreds of thousands of websites but I --

11 **THE COURT:** Right. And so your -- the scope of your
12 requests includes but is not limited to discovery that would be
13 relevant only to the class issues, correct?

14 **MS. PARK:** Correct, Your Honor.

15 **THE COURT:** All right. Have you, do you believe, met
16 your burden of advancing a prima facie showing that the class
17 action requirements of Rule 23 are satisfied or that the
18 discovery is likely to produce substantiation of the class
19 allegations? That's the *Mantolete* standard.

20 **MS. PARK:** Yes, Your Honor. We believe we have met
21 the standard and I'm happy to go --

22 **THE COURT:** Your papers don't even discuss the
23 standards under Rule 23; do they?

24 **MS. PARK:** They do not, Your Honor.

25 **THE COURT:** All right. But you believe you've met

1 the showing required by something that's not in your papers?

2 **MS. PARK:** Yes, Your Honor, because I believe our
3 papers lay out why all four categories of documents we're
4 seeking are directly relevant to class discovery and to merits
5 discovery. And I'm happy to go through each of those
6 categories if your -- if that would be helpful, Your Honor.

7 **THE COURT:** No. The relevance is not at issue. What
8 issue -- at issue is whether the Court should allow this kind
9 of broad class discovery pre-certification. Now, the Court has
10 discretion to do it regardless of your failure to demonstrate a
11 prima facie case but in trying to determine whether I'm going
12 to exercise that discretion, I wanted to know what you thought
13 of the issues.

14 **MS. PARK:** Yes, Your Honor. So two points -- one,
15 Judge Blumenfeld has not bifurcated discovery here between
16 class discovery and merits discovery. And he's actually set an
17 expedited schedule with all of these deadlines, class
18 certification deadlines and fact discovery deadlines coming up
19 within the next six, seven months.

20 **THE COURT:** Do you think that his October 6th ruling
21 has any impact on this motion?

22 **MS. PARK:** Yes, Your Honor, it does.

23 **THE COURT:** What impact?

24 **MS. PARK:** So one of the arguments that the
25 Defendants have advanced is that discovery needs to be limited

1 to the three websites that the Plaintiff knows she has visited.
2 But that position is directly contradicted by Judge
3 Blumenfeld's October 6th ruling because that order upheld the
4 invasion of privacy claims directly recognizing that we alleged
5 that Plaintiff has visited numerous websites on which the
6 TikTok SDK, that TikTok design is installed and TikTok can then
7 assemble the data from all of those websites to create a
8 "comprehensive profile" on the Plaintiff.

9 So I think the fact that our invasion of privacy and
10 seclusion upon intrusion claim survived shows that we are
11 entitled to discovery not just on the three websites but to all
12 websites that have the SDK installed.

13 **THE COURT:** The Defendants haven't limited their
14 discovery to just those three websites; have they?

15 **MS. PARK:** Well, that's their argument as to why
16 they're not producing --

17 **THE COURT:** My question is, they have not limited the
18 discovery they've produced to you to just those three websites;
19 have they?

20 **MS. PARK:** At times, they have, Your Honor.

21 **THE COURT:** And at times, they haven't?

22 **MS. PARK:** Correct.

23 **THE COURT:** In your supplemental memorandum, you say
24 that they promise to produce a spreadsheet of advertisers by
25 October 6 -- advertisers that have used the code, the SDK,

1 whatever you call it, the pixel, advanced API. Did they
2 provide that spreadsheet to you yet?

3 **MS. PARK:** We received an email from them last night
4 saying they'll produce a list today which we haven't received
5 yet. We immediately asked for clarification, whether that list
6 is going to be a complete list of all websites and we haven't
7 heard any sort of response yet. We'll obviously see what they
8 produce but at this point, we don't have any assurance that the
9 complete list is coming.

10 **THE COURT:** You said in your supplemental memorandum
11 that some of the information you had for the thousands of
12 advertisers contained abbreviations and incomplete names such
13 that you couldn't decipher what it was that you had. Is that
14 still a problem?

15 **MS. PARK:** They again told us yesterday that they
16 will produce something to help us out there but we haven't
17 received it yet.

18 **THE COURT:** Apart from putting it in your
19 supplemental memorandum, did you do anything toward reaching
20 out to Defense side for help interpreting the documents?

21 **MS. PARK:** Yes, Your Honor. We have continued to ask
22 them for updates on their investigations and -- for these
23 documents and --

24 **THE COURT:** That's not my question -- help
25 interpreting the abbreviations and incomplete names on

1 documents you already had. Have you asked them for help doing
2 that?

3 **MS. PARK:** Yes, we have.

4 **THE COURT:** And what did they say?

5 **MS. PARK:** They said they're investigating a way to
6 help us and the update received is what I told Your Honor
7 about, that they'll produce something to help us out.

8 **THE COURT:** So that I can understand the materiality
9 of some of this discovery you seek, let's posit that you get a
10 complete listing of all of the advertisers in question, all of
11 TikTok's customers in question and you say that's relevant to,
12 among other things, identifying the class members, would you be
13 able to, from that list, identify class members?

14 **MS. PARK:** I think it would one input into
15 identifying class members.

16 **THE COURT:** Say that again. I'm sorry.

17 **MS. PARK:** It would be one input into identifying
18 class members.

19 **THE COURT:** One input but it wouldn't be sufficient
20 in and of itself?

21 **MS. PARK:** No, I don't think so, Your Honor.

22 **THE COURT:** How would you go about using that as an
23 input to identify class members?

24 **MS. PARK:** Because then we would know which websites
25 the SDK has been installed. So --

1 **THE COURT:** Right. But you still wouldn't know who
2 visited the websites and whether those visitors were TikTok
3 users or not?

4 **MS. PARK:** That's correct, Your Honor, but I think
5 that list would be a starting point so that we can then seek
6 third-party discovery to reach out to the websites on which the
7 SDK installed to get further discovery on class member
8 identification.

9 **THE COURT:** You are asking for all of the negotiated
10 contracts that TikTok has with its advertisers; is that right?

11 **MS. PARK:** Yes, Your Honor.

12 **THE COURT:** Why do you need all of those?

13 **MS. PARK:** We need those agreements, Your Honor,
14 because Defendants have made that issue relevant by relying on
15 these -- what they call "bespoke data terms" to say that our
16 class is not certifiable. So if you look at the fourth page of
17 Defendants' supplemental memorandum, they actually preview that
18 they're going to attack certifiability using these data terms
19 but then they're not producing them.

20 So, Your Honor, we believe that's highly prejudicial
21 to us and they can't have it both ways. If they're going to
22 make this argument about variations on data terms, then they
23 need to produce those terms to us or if they're not going to
24 produce those terms, then they should be precluded from making
25 any sort of arguments that relies on the supposed variation

1 across data terms of the websites.

2 **THE COURT:** Request Number 23 asks not only for the
3 agreements but also for representations to third-party websites
4 concerning the TikTok SDK. What does that mean,
5 "representations to"?

6 **MS. PARK:** Yes, Your Honor. So what we had in mind
7 was, again, because Defendants have emphasized that the
8 websites are the ones that have the relationship with the
9 website visitors and their privacy policies go toward issues
10 like their consent defense, what we're seeking is some sort of
11 communications or warning letters or something that makes sure
12 that the Defendants are enforcing or making sure that the
13 websites are enforcing their privacy policies with the users.

14 **THE COURT:** Your request is not limited by subject
15 matter. It would ask for any representation on any subject --
16 well, concerning the TikTok SDK. That's the subject matter
17 limitation -- the only subject matter limitation, correct?

18 **MS. PARK:** Yes, Your Honor. That is the subject
19 matter limitation.

20 **THE COURT:** So you think any representation
21 concerning the TikTok SDK would be relevant?

22 **MS. PARK:** We do think so, Your Honor. And, again,
23 to the extent that these are TikTok advertisers, we're not
24 seeking representations with regard to advertising on TikTok or
25 any other relationship between TikTok and the websites. We're

1 asking specifically for the TikTok SDK which we believe is
2 appropriately tailored.

3 **THE COURT:** As to some of these requests, the Defense
4 complains about the lack of a temporal limitation. Do you
5 think there should be a reasonable temporal limitation as to
6 any of these requests?

7 **MS. PARK:** Your Honor, I believe the temporal
8 limitation is set by when TikTok released the SDK. So the SDK
9 has two different trackers within it. The earlier release of
10 the tracker, which is the pixel, was released in 2020. So we
11 wouldn't be seeking documents as to RFP 23 from before whatever
12 the pixel was --

13 **THE COURT:** I'm sorry. You lost me there. Go ahead.

14 **MS. PARK:** Oh, Your Honor, the pixel, we believe, was
15 released in 2020. So I believe that sets a natural temporal
16 limitation.

17 **THE COURT:** And there were -- there was a different
18 SDK released later?

19 **MS. PARK:** Yes. The event's API, I believe, was
20 released after the pixel. So as to the event's API, it would
21 be even a narrower temporal scope.

22 **THE COURT:** I wanted to ask you about Request 18,
23 please. That one asks for documents sufficient to identify all
24 revenues or profits or projections thereof that Defendant made
25 or anticipated making through the collection of Plaintiff's

1 data. As I understand their response, they do not sell
2 collected data and, consequently, there is no revenue or
3 profits resulting from the collection of the data.

4 Why doesn't that response mean that there aren't any
5 documents responsive to Request Number 18?

6 **MS. PARK:** Your Honor, you're correct that they've
7 said they don't sell user data and even if that's true, they
8 have acknowledged that they still use the data and they've said
9 that they used the data for things like machine learning and
10 improving their algorithms.

11 **THE COURT:** Right.

12 **MS. PARK:** And those things, improving their
13 algorithms, that is a big revenue generator for TikTok. That
14 is how TikTok makes money, by being able to predict what users
15 -- what kind of ads users want to see, what kind of videos they
16 want to watch and then tailoring content to their audience.
17 And so to the --

18 **THE COURT:** Right. You're saying it improves their
19 operation. It may, what, enable them to charge more for
20 advertising on TikTok?

21 **MS. PARK:** That's one way that the data would improve
22 their revenue, yes, Your Honor.

23 **THE COURT:** Okay. Well, then take that hypothetical
24 and that's -- and I have said that they use it in various ways
25 and that it might enable them to improve their operations and

1 become an even more successful business. Still, when you look
2 at Request 18, how in the world are they going to identify a
3 document or documents sufficient to show some sort of revenue
4 result from the use of Plaintiff's data?

5 **MS. PARK:** Your Honor, I acknowledge that there may
6 not be one single document out there that shows the revenue --

7 **THE COURT:** No, my point is, wouldn't -- if you're
8 arguing some very indirect relationship between business
9 success and this data collection, it might be arguable but if
10 you're asking for documents sufficient to demonstrate some sort
11 of a causal connection other than all of the documents
12 reflecting their business operations for the last X number of
13 years, I mean, what are they going to identify?

14 **MS. PARK:** Your Honor, that's why we have asked them
15 for documents that show how they're using --

16 **THE COURT:** That's a different request. I'm just
17 asking about 18.

18 **MS. PARK:** With regard to 18, Your Honor, we believe
19 a subset would be documents that just identify the specific
20 algorithms, the specific programs, the specific services and
21 processes that's using the non-user data.

22 **THE COURT:** I wouldn't think so because that's asking
23 for revenues or profits or projections and the documents you
24 just described don't do that.

25 But let's move on. I want to ask you about Number

1 50, please. And this is closer to what you're talking about, I
2 think. 50 asks for all documents concerning any way in which
3 they have benefited from the conduct alleged in the lawsuit.

4 Now, understanding that they use collective data for
5 certain purposes, even so, realistically, how can you expect
6 them to produce all documents that concern all the ways in
7 which they arguably benefited from the use of the collective
8 data? Again, wouldn't that be essentially under your theory
9 every document that concerns their business operation?

10 **MS. PARK:** Your Honor, so, yes, the request may -- I
11 acknowledge that the request could have been drafted in a more
12 tighter way but I think the documents that we're seeking here
13 -- and documents that they have not produced at all, not even a
14 single document -- is documents showing how they're using the
15 data. These -- they've now acknowledged that they used the
16 data but they're simultaneously taking the position that no
17 documents exist showing that use and we just don't think that's
18 realistic.

19 **THE COURT:** Wait a minute. You're saying that they
20 take the position that their -- they have no documents that
21 demonstrate how they used collective data to check the -- check
22 their advertising or improve their algorithms or they reflect
23 any of the other uses?

24 **MS. PARK:** Yes, so two examples. In their briefing,
25 they say that this request that Plaintiff is making, we're

1 seeking documents on imaginary, secret uses of data. And I
2 think that kind of language --

3 **THE COURT:** No, I'm just talking about what they've
4 acknowledged they've done with the data.

5 **MS. PARK:** Yes. So yesterday evening, this email
6 that they sent to us told us -- well, let me take a step back,
7 Your Honor. They acknowledge in this briefing and previously
8 they've acknowledged to us that they used the non-user data for
9 machine learning and to improve certain algorithms.

10 **THE COURT:** All right.

11 **MS. PARK:** But then yesterday evening, they sent us
12 an email and one of the updates in that email is there are no
13 documents that exist to show those uses that they've
14 acknowledged. And that we find hard to believe, Your Honor.

15 **THE COURT:** Well, I don't have the document in front
16 of me that you reference because you only received it last
17 night but it is, I suppose, difficult to believe that data was
18 used in a particular way for particular purposes and there
19 would be no evidence, digital paper or otherwise showing that
20 that was done. But I'll hear from Defense later.

21 Well, let me ask you a question about that. All
22 right. You -- let's say machine learning, improving
23 algorithms, what documents would you expect to exist that would
24 reflect that -- those uses?

25 **MS. PARK:** So, Your Honor, I think there would be

1 emails and there would be descriptions of the specific
2 algorithms or the specific products, services, processes that
3 are getting this non-user data input. But there has to be
4 internal documentation of the algorithms they're improving of
5 the programs that they're developing using this non-user data.
6 So I think that would just be one example of the documents that
7 would exist.

8 And if I may, Your Honor, on this category, I think
9 the history of the meet-and-confer is illuminating because at
10 our very first meet-and-confer, Defendants categorically said
11 that they don't see or use the data. And with significant
12 probing from us, they've now acknowledged that they, in fact,
13 do use the data but they don't have documents on it. And so
14 it's a shifting target and I believe that they need to produce
15 the documents showing their own acknowledged uses of the data.

16 **THE COURT:** So you think if they say, we don't have
17 any documents reflecting these uses and they say that to you,
18 then if the Court orders them to produce the documents that
19 reflect the uses, they're just going to suddenly say, oh, here
20 they all are?

21 Ordinarily when a party represents in response to a
22 request for discovery that no responsive documents exist,
23 that's the end of the matter and the Court doesn't ordinarily
24 compel them to produce that which they say they cannot. Do you
25 think I should vary from the usual procedure here because why,

1 because you're suspicious by reason of the history of your
2 meet-and-confer negotiations?

3 **MS. PARK:** It's not just suspicion from the meet-and-
4 confer negotiations although their positions have shifted
5 dramatically in that -- in those negotiations. But as Your
6 Honor said earlier, they have acknowledged uses of the data
7 and --

8 **THE COURT:** Because it's simply a little hard to
9 believe that there wouldn't be a paper trail. It's just a
10 matter of common sense.

11 **MS. PARK:** Yes.

12 **THE COURT:** Let me ask you about a couple of other
13 requests, please. Number 14 asks to identify all current and
14 former officers, directors, managers, employees and consultants
15 with knowledge of the conduct of Defendants described in the
16 operative complaint.

17 They respond at one point that the conduct described
18 in the operative complaint is so broad in nature that every
19 current and former officer, director, manager, employee and
20 consultant would have some knowledge as to something that's
21 alleged in the complaint.

22 Is that a fair point and if it is, isn't Request
23 Number 14 meaningless?

24 **MS. PARK:** Your Honor, that is a fair point and the
25 parties met and conferred on the issues and the parties agreed

1 to narrow that to officers, directors, managers, employees,
2 consultants with knowledge on the TikTok SDK's collection of
3 non-user data.

4 And then in order to speed things along even more, we
5 asked them to please investigate whether there are
6 organizational charts and please just produce the
7 organizational charts.

8 **THE COURT:** Well, they said they don't have any.

9 **MS. PARK:** And now they've said they don't have
10 either formal or informal organizational charts.

11 **THE COURT:** So what are you asking the Court to do
12 with respect to Request Number 14?

13 **MS. PARK:** To the extent that there are other
14 documents that lay out the persons with knowledge and their
15 supervisory relationships within the corporate -- or within the
16 corporation, we believe the Defendants should produce those
17 documents.

18 **THE COURT:** Their knowledge of what?

19 **MS. PARK:** The knowledge of the TikTok SDK's
20 collection of non-user data which is how the parties narrowed
21 the request in meet-and-confers.

22 And, Your Honor, with regard to this final category
23 of documents, they have now said they don't have organizational
24 charts and then they also say, well, we shouldn't have to
25 produce any documents responsive to these four requests because

1 we gave you an interrogatory response that identifies eight
2 persons with knowledge.

3 But we do not believe that that interrogatory
4 response is a substitute for responsive documents to these four
5 requests. For example, the interrogatory responses, that does
6 not include information on the person within TikTok who came up
7 with the idea of the TikTok SDK or the engineers that wrote the
8 code for the SDK or tested it or persons in charge of marketing
9 and making sure it's privacy-compliant interacting with the
10 websites and who those personnel supervisors are.

11 And as Your Honor can see, other requests within this
12 category also seek committee or board meetings -- board meeting
13 minutes and these are all documents that they have not disputed
14 the relevance of. Yet they say they don't have to produce
15 because they don't keep org charts and because they gave us
16 this interrogatory response that identifies eight people with
17 knowledge.

18 **THE COURT:** To the extent the Court grants your
19 motion, you've asked for a deadline for compliance with the
20 order seven days hence. Given the breadth of the request at
21 issue, do you think that's realistic?

22 **MS. PARK:** We do, Your Honor, because we served these
23 requests in late June and they've been outstanding for months
24 and they have represented --

25 **THE COURT:** But they will not know until I rule what

1 part of the request or the part -- is the part to which they're
2 going to have to respond.

3 **MS. PARK:** Yes, Your Honor, but if you look at their
4 response, they say they're working on all of it or they're --
5 they have already agreed to produce all of it. So it is our
6 hope and expectation that they have already been doing the
7 investigation into all of these categories of documents. So it
8 won't be a surprise to them that they have to produce these
9 documents that they haven't challenged the relevance of.

10 **THE COURT:** Well, what's the urgency?

11 **MS. PARK:** Your Honor, the urgency is that our class
12 certification motion is due in early February which is less
13 than four months from now and we don't have some of these
14 foundational pieces of discovery, like the list of websites
15 that have the SDK installed. So we have a lot of work to do
16 between now and February 9th. And the documents that we're
17 seeking in this motion are some of the most basic foundational
18 pieces of discovery that we need.

19 **THE COURT:** Do the documents you're seeking have
20 anything to do with a plan to move to amend by the deadline for
21 such motions?

22 **MS. PARK:** So, Your Honor, Judge Blumenfeld gave us
23 until today to file an amended complaint and we will do so. We
24 believe we've, frankly, been prejudiced by having to do that
25 without any of this discovery that we've sought and so we will

1 file the amended complaint today but I think all of this
2 discovery is necessary to be able to determine whether we need
3 to move for leave to amend a second time. I don't think that's
4 out of the question.

5 **THE COURT:** So you're saying you think part of the
6 urgency is that you may want to move to amend and there's a
7 deadline for such motions in -- what is it -- November 13 or
8 something like that?

9 **MS. PARK:** Actually, Your Honor, that deadline has
10 passed. That deadline was last week, October 13th, but along
11 with Judge Blumenfeld's motion-to-dismiss opinion, he gave us
12 until October 20th, which is today, to file an amended
13 complaint.

14 **THE COURT:** Just a minute, please.

15 **MS. PARK:** Oh, Your Honor, November 13th is the
16 hearing date for any motion for leave to amend.

17 **THE COURT:** Okay. That's what confused me. But you
18 would have to file it, obviously, well in advance.

19 All right. Anything further before I hear from the
20 Defendants?

21 **MS. PARK:** No, Your Honor. Thank you for your time.

22 **THE COURT:** Thank you.

23 Argument for the Defendants, please.

24 **MR. JIH:** Thank you, Your Honor. I'm going to handle
25 two of the issues in terms of the list of advertisers and then

1 the agreements. And then my colleague is going to handle the
2 issues about uses among user data and individuals that might
3 have knowledge.

4 **THE COURT:** Go over that again, please.

5 **MR. JIH:** Okay. So I will cover the first two
6 topics, the list of advertisers and agreements with
7 advertisers. And the remaining issues, I think, specifically
8 uses of non-user data and people with knowledge, my colleague
9 is going to handle.

10 **THE COURT:** All right.

11 **MR. JIH:** So on the list of advertisers, what we
12 produced -- we produced to the Plaintiffs three weeks ago a
13 list beyond the three websites identified in the complaint of
14 all --

15 **THE COURT:** Let me ask you this. In response to
16 Request Number 1, you promised to produce non-privileged
17 documents sufficient to show all third-party websites that use
18 or have used the pixel or advanced APL. That's in your
19 response. Have you done that?

20 **MR. JIH:** In two phases and as of today, we will be
21 -- we will have produced everything we have. So --

22 **THE COURT:** Have you done that?

23 **MR. JIH:** We've done a part and we'll complete it
24 today. So let me explain --

25 **THE COURT:** Why has it taken you so long?

1 **MR. JIH:** Because that data requires our engineers to
2 create special tools to export the information. It doesn't
3 exist in a way that the Plaintiffs want because we don't use
4 the data in that way. So we -- there hasn't been any
5 resistance on our part. It's been --

6 **THE COURT:** You don't know who your advertisers are?

7 **MR. JIH:** Not in a comprehensive list. We can do
8 individual queries. So the list we gave three weeks ago were
9 the advertisers who are current that go back for the ones that
10 use this year. They wanted to go into the past. So we had to
11 create a tool --

12 **THE COURT:** Well, if I grant the motion and order you
13 to produce the documents responsive to Request Number 1 within
14 seven days, you've got no problem with that?

15 **MR. JIH:** The reality is we would have already
16 complied. We produced 88,000 websites three weeks ago and
17 we've produced over half a million as of today. And that's the
18 extent of our data that goes back 900 days and it includes
19 everyone that uses the SDK the way they defined it. And it
20 includes, since they wanted it, a URL where they can go in and
21 type in themselves to see the website. That's something we
22 custom added in.

23 So as of today, they will have a list of over 600,000
24 websites that use the TikTok SDK including the URL that they
25 want. And we think we've actually -- I mean, I don't think

1 that's a record of delay, Your Honor. I think we've gone way
2 beyond the three websites named in the complaint and we've
3 worked really hard to get it done this quickly.

4 And they knew we were going to do it. I think they
5 just wanted the threat of an order over our head. But we did
6 it. We're going to have it done. It's in the process of being
7 produced today. And I think it's more than sufficient.
8 Anything beyond that, Your Honor, I think is disproportionate
9 to the needs of the case, especially since this is supposed to
10 be a class.

11 **THE COURT:** I'm -- I don't understand what you're
12 arguing.

13 **MR. JIH:** So I'm thinking we've complied, Your Honor.
14 I don't think there's any basis for an order against us on that
15 request. We're basically giving virtually --

16 **THE COURT:** The basis is that you didn't comply
17 before the order -- before the motion was filed during the
18 meet-and-confer process and that you didn't comply afterward
19 and that you opposed the motion.

20 **MR. JIH:** What we said, Your Honor, is they filed the
21 motion even though they acknowledge we said we are about to
22 give it to you, the list we have immediately.

23 **THE COURT:** You said, among other things, the
24 discovery sought is not proportional to the needs of the case.
25 That's Number 16 on the joint stipulation.

1 **MR. JIH:** But we agreed --

2 **THE COURT:** So why did you argue that in opposition
3 to the motion if you were going to fulfill your promise to
4 produce the documents responsive to Request Number 1?

5 **MR. JIH:** Because that, Your Honor, gives us cover
6 for the fact that it's taking us a little bit longer than they
7 would like and the fact that we've got the most accessible to
8 them first is just a reflection of the fact that the additional
9 data they wanted took longer.

10 **THE COURT:** So this great burden that you complain
11 about to produce whatever it was that was requested not only in
12 Number 1 but in the other request -- this great terrible burden
13 that causes so much time, I presume, and so much money and so
14 much delay, where is the evidence before the Court to support
15 your contention of disproportionality to support your
16 contention of burden?

17 **MR. JIH:** Your Honor, we have not --

18 **THE COURT:** You don't have any admissible evidence
19 before the Court concerning the extent of the burden; do you?

20 **MR. JIH:** Because we focused on producing it and
21 that's why we're not trying to --

22 **THE COURT:** The answer to my question is you have no
23 admissible evidence before the Court to support your argument
24 regarding burden and disproportionality, correct?

25 **MR. JIH:** What -- because we're not arguing that for

1 the list of advertisers here today. We've decided to comply --

2 **THE COURT:** You're not arguing it. You're arguing it
3 on Page 16 of the joint stipulation.

4 **MR. JIH:** But despite that objection, Your Honor, I'm
5 here to tell the Court that we are complying and --

6 **THE COURT:** And the answer to my question regarding
7 disproportionality and burden is no admissible evidence before
8 the Court?

9 **MR. JIH:** Well, no. I think what is admissible, Your
10 Honor, is that we have the list of 88,000 websites beyond the
11 three. And the question -- even if it just takes time to
12 print, printing this list is excessive compared to what benefit
13 it gives them. And the fact that we took another half a
14 million --

15 **THE COURT:** Your representations are not evidence,
16 not admissible evidence.

17 **MR. JIH:** No, but it's in the argument, Your Honor,
18 that we've produced the list.

19 **THE COURT:** It's in an argument. There is a
20 declaration from counsel and a declaration is -- does -- is not
21 -- does not have admissible evidence. It's dependent upon
22 hearsay, what somebody told counsel.

23 **MR. JIH:** Your Honor, we didn't --

24 **THE COURT:** So you have nothing.

25 **MR. JIH:** That's not true, Your Honor. We have both

1 sides acknowledging it in the joint stipulation. So it's in
2 the stipulation. We are not disputing it in evidentiary --

3 **THE COURT:** You have both sides acknowledging what --

4 **MR. JIH:** That we've produced a list --

5 **THE COURT:** -- the disproportionality of the request?

6 **MR. JIH:** No, that we've produced a list of 88,000
7 with more to come and that's not in dispute.

8 **THE COURT:** For all I know, as far as admissible
9 evidence is concerned, you produced that list with one stroke
10 -- one key stroke.

11 **MR. JIH:** Your Honor, I guess the reason why I'm
12 having a disconnect here is we're not asking you to not --
13 we're not asking you to say we don't have to produce it because
14 we're producing it. Add it's literally coming today. And it's
15 six times this list of --

16 **THE COURT:** My point is you should not have opposed
17 the motion as to Request Number 1 and argued disproportionality
18 of the request --

19 **MR. JIH:** The reason we had --

20 **THE COURT:** -- because you had promised already to
21 produce the responsive documents and unless you were reneging
22 on that promise, you shouldn't have opposed the motion.

23 **MR. JIH:** The reason was that the motion --

24 **THE COURT:** And if you were going to oppose the
25 motion and argue disproportionality and burden, you should have

1 provided some admissible evidence to support the argument.

2 So let's move on. What's your next point?

3 **MR. JIH:** Okay. Your Honor, the next point is in
4 terms of the agreements. Again, we argue it was
5 disproportionate and not relevant. The three websites
6 identified by the named Plaintiff, we've produced the
7 agreements for those three.

8 **THE COURT:** Your response to Request Number 23 was
9 that you would produce any non-privileged responsive documents.
10 That's what you said in your request -- I'm sorry -- in your
11 response.

12 **MR. JIH:** So Number 23 states that we object -- the
13 phrases are too broad but we would --

14 **THE COURT:** The last sentence, "TikTok will produce
15 any non-privileged responsive documents." Have you done that?

16 **MR. JIH:** I don't -- Number 23 -- let me just look
17 real quick to make sure this is the page. Well, we said we
18 would produce subject to our objections and we objected to the
19 fact that it's extremely burdensome because it's not relevant
20 to her claims. So subject to that limitation --

21 **THE COURT:** Oh, oh, you meant in your response that
22 when you said TikTok will produce any non-privileged responsive
23 documents -- what you really meant was TikTok will produce any
24 non-privileged responsive documents that it considers
25 proportional to the needs of the case?

1 **MR. JIH:** Well, I acknowledge that it may be a little
2 ambiguous but in the meet-and-confer, they clarified. We
3 stated our position and so they understood and that's why their
4 motion --

5 **THE COURT:** Yes, in the meet-and-confer, you
6 retreated from the position that you expressed in your
7 response. At least that's the way it appears to the Court.

8 **MR. JIH:** It was not the way it was intended and it
9 certainly was -- they were never under any impression that we
10 promised to produce all agreements. It was very clear that we
11 had a dispute over that. And what we told them was we thought
12 anything beyond the three websites goes too far because they
13 don't need it. None of the issues depend on us claiming a
14 website breached a promise to us or breached a representation.
15 It's not a defense.

16 **THE COURT:** They claim that you foreshadow your
17 defense to the anticipated class certification motion in a way
18 that requires that they see the terms of negotiated agreements.

19 **MR. JIH:** And it grossly misstates --

20 **THE COURT:** Why is that wrong?

21 **MR. JIH:** -- what we said. What we said was, we
22 don't think it's relevant and to the extent it is or they claim
23 it is, it only shows an additional individualized issue. Well,
24 we took the position is you don't need it and if you think it's
25 relevant, that doesn't help you with class certification. It

1 hurts you on class certification. But we've never in any way
2 in this case asserted a defense based on the --

3 **THE COURT:** Well, whether it helps them or it hurts
4 them, it's relevant.

5 **MR. JIH:** But that's the quote they're taking out of
6 context. We did not foreshadow that we're going to argue
7 individual issues on agreements with websites to be the basis
8 for not class -- for not having class certification. They
9 can't quote that. The quote that they're referring to just
10 says, to the extent you think it's relevant, we think it's
11 further individualized but we don't think it's relevant. So I
12 don't think we've made that concession.

13 And certainly what individual websites may have said
14 to their users may be relevant but nothing about any
15 representation or discussion between us and the websites has
16 anything to do with any of the defenses or the issues in this
17 case and they haven't articulated why it might. So I think
18 we've complied.

19 And by the way, they have the standard form
20 provisions on the SDK. They want us --

21 **THE COURT:** Have you searched for representations
22 that you made to your advertisers concerning the pixels, the
23 SDK, the whatever?

24 **MR. JIH:** We've certainly, with respect to the three
25 websites, followed up on any kind of discussion with the

1 websites about the use of non-user data -- non-TikTok user
2 data. We didn't identify any but we have not gone through
3 individual negotiation files for all of the other advertisers.
4 Nor do we have any reason to believe there would be.

5 Even in the three they identified, when we pulled up
6 their agreements which are not just about the SDK -- they're
7 all agreements. In fact, there isn't even a Hulu agreement.
8 The agreement is a Disney agreement which applies to Hulu.
9 They have maybe some provisions that might relate to SDK and in
10 those three provisions, there were no changes from the standard
11 SDK form they already have.

12 So we gave them the form SDK provisions and then the
13 three we looked for, because the three are mentioned in the
14 complaint, have no deviation from the standard and yet they say
15 we have to go chase down every single possible deviation but we
16 don't remember any, don't think they would be and it's not
17 relevant to any of the issues in the case.

18 **THE COURT:** How many separately negotiated agreements
19 are there?

20 **MR. JIH:** Two thousand three hundred and ninety. And
21 there are over, of course like I said, historically 600,000
22 users of the pixel and the SDK as we defined it. And out of
23 those, most just don't have any agreement. And in 2,390 --

24 **THE COURT:** I'm sorry. You lost me. Most don't have
25 any agreement. Most what?

1 **MR. JIH:** No, they don't have an individually
2 negotiated bespoke agreement.

3 **THE COURT:** Oh, okay.

4 **MR. JIH:** They have the standard --

5 **THE COURT:** So 2,390 individually negotiated
6 agreements?

7 **MR. JIH:** Correct. That doesn't mean they have any
8 deviation on the SDK terms. It just means they have an
9 agreement that covers all aspects of the relationship.

10 **THE COURT:** How many deviations?

11 **MR. JIH:** We've got -- we don't know of any
12 deviations but we haven't reviewed individual agreements. But
13 we're not relying on any deviations. They're not -- it's not
14 something that normally comes up. So we don't know unless we
15 look and we're saying it's burdensome to go investigate. We
16 wouldn't even know where to start.

17 **THE COURT:** And you haven't looked for
18 representations, correspondence --

19 **MR. JIH:** Well, we looked --

20 **THE COURT:** -- setting up what you were going to do
21 and what they were going to do?

22 **MR. JIH:** Well, that's set forth by the way our SDK
23 works and also the -- that's why I said the standard doesn't
24 change. And we have not gone through to look for individual
25 correspondence on individual agreements that are not the three

1 websites that are at issue in the complaint directly.

2 And I don't think they've -- nobody has ever raised
3 the issue of representations. We've always said we're not
4 actually relying on any representations by the websites to us.

5 **THE COURT:** Well, they're entitled to discovery
6 that's relevant not only to your defenses but to their claims.

7 **MR. JIH:** But we've asked how it's relevant to the
8 claims as well. Their claims are not turning on some kind of
9 third-party beneficiary doctrine of an agreement between a
10 website and TikTok. Their whole argument is that their users
11 -- that these website visitors didn't even know TikTok was
12 there.

13 So the fact that there may have been representations
14 between the website and TikTok has nothing to do the claim.
15 They disclaim, in fact. They say they had no idea about
16 TikTok.

17 **THE COURT:** Well, I mean, this probably didn't happen
18 in the real world but what if in negotiation with one of your
19 advertisers, the advertiser balked at doing what you wanted to
20 do in regard to putting your code on their website to collect
21 information and you then corresponded with them and explained
22 why it was important to you to do that and collect data and how
23 valuable this was to your operation?

24 It probably didn't happen but if there was
25 correspondence like that, that would be relevant to Plaintiff's

1 claims; wouldn't it?

2 **MR. JIH:** It may or may not but I think all of that
3 is on the website. I mean, we would direct them to the website
4 that explains what the SDK or the pixel and what they do and if
5 they want to do it. And if they balk on it, they just wouldn't
6 use it. I mean, the website -- the code is just available for
7 websites to incorporate if they want to.

8 There's -- we have no -- I mean, we don't have the
9 leverage with the advertisers. We want the advertisers to
10 advertise on our platform and if they don't want to use that
11 tool and they don't think it's useful, they just don't use it.
12 I mean, that's not something we want to force them to --

13 **THE COURT:** It's not something as to which you can
14 insist in the real world.

15 **MR. JIH:** Nor is there any reason we would want to,
16 Your Honor. As we've tried to explain, we only use the pixel
17 to help advertisers determine if their ads are effective.
18 That's it to the -- and they only appear to non-TikTok -- I
19 mean, they only appear to TikTok users.

20 **THE COURT:** What about your use in regard to machine
21 learning and improving your algorithms?

22 **MR. JIH:** That's another kind of distortion of what
23 we've said. When we talk about algorithms --

24 **THE COURT:** I thought those words were out of your
25 papers.

1 **MR. JIH:** No, no, but I've explained in the context
2 of what we're referring to. We're not talking about trying to
3 match or better tailor viewing habits or what people look at on
4 the TikTok app. When we're talking algorithms, we're talking
5 about how to match the data to see if it's actually a TikTok
6 user or not. We're talking about getting rid of bad data like
7 bots. Like, one of the things we might look at the data is if
8 the advertiser says, this looks funny. The numbers don't look
9 right.

10 And we might look at the data to say, oh, yeah, that
11 looks like it's all coming from a bot. How do we get rid of
12 that? But it's not some kind of systemic use to improve what
13 we do. It's more just to get rid of the bad data.

14 And then in terms of our use of it, yes, we have
15 aggregated reports that will let an advertiser know how many of
16 the people who, let's say, did something on their website were
17 TikTok users who saw their ad. That's it. There's no -- you
18 can't even tell anything about non-user data because you don't
19 know who they are.

20 It's just reflected in certain reports because it's
21 data and it just shows that if we only have 10 percent people
22 matched, yes, the aggregated report reflects that only 10
23 percent were matched; 90 percent were not. But that's the use
24 we're talking about. That's why there are no documents talking
25 about the garbage data that we exclude but it reflects it.

1 That's the disconnect where they're trying to say
2 that because it uses it in a very broad sense --

3 **THE COURT:** So then the non-user garbage data that's
4 not matched, you don't do anything with it?

5 **MR. JIH:** We discard it after 14 days. We look at it
6 to try to get a match. Obviously, we are digesting it and then
7 sometimes the advertiser will say, hey, it looks like the data
8 is not coming through or something like that. We may want to
9 try to look at it again. Did we miss something or do we need
10 to improve something in our matching process? But we don't use
11 the data to, like, commercially benefit from it.

12 We don't sell it. We get rid of it once -- after a
13 certain period it goes stale. We just get rid of it because
14 we're trying to get to the matched data. And that's important
15 because the only thing that's relevant to advertisers are
16 people who saw the ads. And only TikTok users see the ads
17 because the ads only appear on TikTok. So we're trying to get
18 rid of it to isolate who the TikTok users are.

19 **THE COURT:** So you're saying that you do not use the
20 non-TikTok user-collected data for any purpose whatsoever other
21 than to exclude it --

22 **MR. JIH:** Yes, or --

23 **THE COURT:** -- from the advertisers' consideration?

24 **MR. JIH:** -- or to report that, of all the hits that
25 we got on something, we could only match a certain percentage

1 to TikTok users. That's the aggregated use that we're talking
2 about. We might look at data just to see if there's a
3 better --

4 **THE COURT:** No, no, no. That's the aggregated use.

5 **MR. JIH:** Right.

6 **THE COURT:** I'm talking about all uses because it
7 appeared from the papers there was this aggregated report
8 use --

9 **MR. JIH:** Yep.

10 **THE COURT:** -- for purposes of the advertisers'
11 interests and there was a use to improve your algorithms for
12 purposes I didn't understand and to improve -- or for machine
13 learning, whatever that means in this context.

14 **MR. JIH:** And what I'm saying is both of those uses
15 are related to the matching process for advertisers. So the
16 machine learning would be we might need to -- we might learn,
17 oh, hey, if we can exclude this kind of data or look for this
18 data, we can do a better match. Or this is how we can decide
19 if something is a bot from Russia or that's not actually a
20 human, that's actually a consumer. Like, how do we identify
21 bad data or fraudulent data to exclude it? We're not using it
22 in any other way.

23 So, yes, you're right, Your Honor. It's not
24 aggregated use, per se, but it's like part of our processing of
25 the data to try to separate the useful from the un-useful.

1 That's what it's referring to -- all three of them. So that's
2 why I think there's some frustration over they're not being
3 documents because we're acknowledging that we might handle or
4 we have to evaluate the data to try to see who we can match.

5 So we do use it in that sense but we're not using it
6 in a way that you would expect a P&L sheet or, like, a document
7 explaining the process. These are ad hoc things we're trying
8 to do to tweak, is what we're trying to do in a given
9 situation.

10 **THE COURT:** Well, even so, why wouldn't there be some
11 sort of a paper trail regarding the matching, non-matching
12 algorithm improvement --

13 **MR. JIH:** Well, there --

14 **THE COURT:** -- excluding bot process, all of that?

15 **MR. JIH:** -- well, there isn't -- there is a general
16 procedure explaining that we try to match data and that we get
17 rid of all of that. That's not even at issue because we peruse
18 that. A lot of that is publicly available. The question is,
19 is there any kind of specific document that says, ah, you used
20 the data you don't want to do that? No. That -- this isn't
21 written that way because we don't want that data.

22 In an ideal world, if we can snap our fingers and
23 only get TikTok-user data, we'd be thrilled but that just isn't
24 how the data comes in. We have to find a way to separate it
25 and, yes, in the general sense about the matching process, we

1 certainly have documents that we're producing -- they're
2 publicly available that talk about that. And then, obviously,
3 our deponents are ready to talk about it.

4 But the actual specific documents, we used non-user
5 data, that's just not the way the company thinks about this
6 data because we don't use it in that way. We don't -- we're
7 not in the business of trying to get the non-user data.

8 **THE COURT:** It doesn't matter how you think about it.

9 **MR. JIH:** Well, I'll say the documents don't exist.

10 **THE COURT:** What matters is what is available --

11 **MR. JIH:** Yeah.

12 **THE COURT:** -- in your files, digital files and
13 otherwise that would reflect how you use the data.

14 **MR. JIH:** And, Your Honor, I agree with you. I was
15 just saying that to explain why we wouldn't have those
16 documents because the company doesn't think of it -- of we were
17 wanting to use non-user data. That's why documents don't exist
18 that talk about non-use or don't talk about how we don't use it
19 or how we exclude it other than the general which we were not
20 -- we've already given them what's publicly available.

21 **THE COURT:** All right. Do you want to hand off the
22 argument now?

23 **MR. JIH:** Yeah. You can go ahead now.

24 **MS. MANCALL-BITEL:** Thank you, Your Honor. The next
25 category -- and I'll group a few together but they largely fall

1 within RFP 18. These are the documents about the revenues and
2 profits, projections. As Victor explained, these are tools
3 that are used in conjunction with ads. Those ads are served
4 only to TikTok users. So there's -- there can be no revenue
5 from advertising based on non-user TikTok -- non-TikTok-user
6 data. So those documents simply just don't exist.

7 **THE COURT:** Well, they're not talking about revenue
8 -- they're not restricting their request to revenues from
9 advertising. Their theory is that in the long run, you
10 improved your business operations through the use of non-TikTok
11 user data collection and there have to some kind of documents
12 that would reflect that.

13 **MS. MANCALL-BITEL:** Right, Your Honor, and I would
14 push back on the speculation that there are documents that
15 reflect that. That is a very tenuous sort of connection
16 between the two things. As Victor said, it would not show up
17 on something like a P&L sheet or, like, an asset list or
18 anything like that. We get rid of it. We're not making money
19 off of it. We're not using it in ways that are money-making.

20 **THE COURT:** And you're using it simply to exclude it?

21 **MS. MANCALL-BITEL:** We're using it -- first, we're
22 using it to match to see of all the data who comes in who's
23 even a TikTok user, whose data would be useful to us.

24 Once we've sorted out who's a TikTok user with useful
25 data versus floating event data that is unmatched, we may use

1 it for the -- in the ways that Victor explained which would be
2 sort of defensively, right, identifying. Are there 50 IP
3 addresses -- or are there 50 clicks per second from one IP
4 address? Because that would suggest that that's a bot farm.
5 How do we exclude that? How do we recognize that?

6 Or, for example, similar, if the data looks off, they
7 may call the advertiser and say, hey, I don't think you've
8 programmed your pixel right because you're missing data that
9 should be here or you're sending double data, things like that.

10 **THE COURT:** And doing that is helpful to your
11 operation?

12 **MS. MANCALL-BITEL:** It is helpful so that advertisers
13 can get a real sense of how their ads are doing on the
14 platform.

15 **THE COURT:** And if you didn't do that, your -- you
16 wouldn't be able to provide information as accurate as you do
17 to the advertisers?

18 **MS. MANCALL-BITEL:** Well, we have to be able to
19 match. That's right. There's no way to figure out who's a
20 TikTok user and who is not before the data comes in and we can
21 try that matching process.

22 **THE COURT:** Okay. And so in the long run by doing
23 what you're doing, you're what, enabling your operation to
24 charge more for advertising in the future or at least you're
25 able to maintain the business of the particular advertiser and

1 keep the advertiser satisfied?

2 **MS. MANCALL-BITEL:** We are certainly doing all of
3 this to help our advertisers understand what's on the platform
4 and what their ads are doing on the platform, who's clicking on
5 them and who's buying things, things like that so we're not
6 inundating them with data that's not useful to them.

7 But we don't keep the data. We're not -- the goal of
8 it is to identify what's useful for the advertisers to know.

9 **THE COURT:** So if you were asked to -- as I guess you
10 are asked to in these requests, to identify documents and
11 produce documents that reflect how you benefit from your use or
12 maybe you would want to say "exclusion" of the data collected
13 from non-TikTok users, how would you be able to do that?

14 **MS. MANCALL-BITEL:** Well, that's the problem, Your
15 Honor. I don't think we would be able to. It's hard to
16 imagine a type of document that would say, we helped -- we
17 found a bot farm, so Build-A-Bear's count is a little
18 inaccurate and, therefore, down the line, we charged
19 Build-A-Bear a dollar more or whatever it might be. It's hard
20 to understand how those documents --

21 **THE COURT:** It's too indirect --

22 **MS. MANCALL-BITEL:** It's too indirect.

23 **THE COURT:** -- and nonspecific a benefit to be
24 reflected in a particular document?

25 **MS. MANCALL-BITEL:** That's correct.

1 **THE COURT:** Would you look at Number 49, please?

2 **MS. MANCALL-BITEL:** Yes, Your Honor, the modification
3 and improvement of services?

4 **THE COURT:** Right.

5 **MS. MANCALL-BITEL:** This goes to what Victor was just
6 talking about as well, right. We improve our learning in our
7 rhythms to do things like identify bot farms and to do things
8 like identify pixel misfires. These are ad hoc uses. We have
9 not learned of any documents and that makes sense because a lot
10 of this would just be someone -- to the extent that this
11 happens, someone picking up the phone and saying, hey, I think
12 your pixel misfired. Why do we have so much data on this?
13 It's nothing systemic.

14 **THE COURT:** But if it happened, wouldn't there be
15 something to memorialize it having happened?

16 **MS. MANCALL-BITEL:** There may or may not be a
17 document saying, hey, I fixed Build-A-Bear's pixel because I
18 was looking at the data but that is a far cry from ways that we
19 improved our product and services. There are not, for example,
20 newly developed products where we say, hey, we looked at all
21 this non-user data and guess what? We could actually build
22 this into a tool that does Y.

23 **THE COURT:** Well, your response to this request and
24 some of the others -- your responses are somewhat confusing.
25 It appears what you're arguing now is there simply aren't any

1 documents responsive to the request but that's not what your
2 original response says.

3 What your response argues in the objections is
4 something to the contrary that the request is so broad, it
5 would bring in so many documents, et cetera, that without a
6 temporal limitation that it would be overly -- it would be
7 unduly burdensome to produce all of the responsive documents
8 and that you're willing to discuss narrowing the request.

9 **MS. MANCALL-BITEL:** That --

10 **THE COURT:** That seems like a very silly response
11 given what you're now telling me.

12 **MR. JIH:** Your Honor, we share your frustration.

13 **THE COURT:** Please, one person argue at a time.
14 You've argued already.

15 **MS. MANCALL-BITEL:** Yes, Your Honor. That's -- the
16 request as drafted we believe to be very overly broad which is
17 why we wanted to meet and confer and understand what they were
18 really looking for.

19 **THE COURT:** A request isn't overly broad if there are
20 no documents responsive to it within your possession, custody
21 or control which is what you're now arguing.

22 **MS. MANCALL-BITEL:** That's right because it took time
23 to investigate this issue and they moved while they knew we
24 were doing --

25 **THE COURT:** So you fired off your objections without

1 knowing what you were saying?

2 **MS. MANCALL-BITEL:** It took time to find the right
3 people to look through these ad hoc -- and understand these
4 ad hoc uses. It took more time and we've continued to
5 investigate. That's -- and so we have now told them we have
6 found no such documents.

7 **THE COURT:** What about Number 54? Are there any
8 documents that reflected plans to collect the data -- collect
9 or use?

10 **MS. MANCALL-BITEL:** Yes, Your Honor. So to the
11 extent that this is -- that this fits within Plaintiff's motion
12 and the category that she put this in, which is documents about
13 use, the same issue applies. We don't use the data in the ways
14 that she speculates and we don't profit from it. So those
15 documents --

16 **THE COURT:** That doesn't matter -- "use" means how
17 you use it, not how they think maybe you used it. So you do
18 use the data in certain ways. Do you have any documents that
19 reflect plans to do so?

20 **MS. MANCALL-BITEL:** We have not found documents that
21 reflect plans to use the data in the ways that we've been
22 talking about which is the fraud and identifying pixel misfires
23 as, again, those are quite ad hoc issues. It's not a
24 comprehensive systematic thing.

25 With respect to general planning documents, a lot of

1 these have nothing to do with how we use or how we use the data
2 which is the subject of this motion. There's no argument about
3 that and, in fact, we have agreed to produce these planning
4 documents.

5 **THE COURT:** You've agreed to produce what planning
6 documents?

7 **MS. MANCALL-BITEL:** To the extent that -- if they
8 exist, right. If they exist, we have agreed to produce
9 business plans, technical architecture documents which are very
10 technical documents and spending plans if they exist but that
11 does not reflect any use. That just reflects the building of
12 the tool.

13 **THE COURT:** That's planned collection, right?

14 **MS. MANCALL-BITEL:** Planned collection.

15 **THE COURT:** The request asks for documents relating
16 to collection and/or use.

17 **MS. MANCALL-BITEL:** That's right, Your Honor, but the
18 use -- again, the use documents don't exist because there is no
19 use in the way that Plaintiff speculates there is.

20 **THE COURT:** The collection planning documents do
21 exist?

22 **MS. MANCALL-BITEL:** We are searching for them and we
23 intend to produce them to the extent that they exist, generally
24 speaking.

25 **THE COURT:** Why haven't you produced your committee

1 and board meeting minutes discussing your collection of data
2 through the third-party websites? That's Number 17.

3 **MS. MANCALL-BITEL:** Sorry, Your Honor, one second.
4 We have not -- well, we haven't found any yet. We are
5 continuing to look. The problem is that while the pixel may be
6 discussed at board meetings and committee meetings, we've been
7 told it's highly unlikely that specifically the collection and
8 "use" of non-user data is discussed in any detail because,
9 again --

10 **THE COURT:** Hold it.

11 **MS. MANCALL-BITEL:** -- not useful --

12 **THE COURT:** So you're drawing a distinction between a
13 committee meeting minute that reflects something about putting
14 pixels on customers' websites that, in fact, function in this
15 manner and you're drawing a distinction between those minutes
16 and the hypothetical minutes that would say, "And we're using
17 this to collect the data of non-TikTok users"?

18 **MS. MANCALL-BITEL:** That's right, Your Honor, because
19 the --

20 **THE COURT:** I would suggest to you that the former is
21 also responsive to Request Number 17.

22 **MS. MANCALL-BITEL:** We would say the goal of the
23 pixel and what is typically discussed is how to collect and use
24 TikTok user data. That is the thrust of all of -- almost all
25 of the conversations of the company about the pixel. So we are

1 drawing a distinction because they want to know about --

2 **THE COURT:** I wouldn't draw a distinction as to
3 Request 17 because the pixels collect not only TikTok users'
4 data but also non-TikTok users' data.

5 **MS. MANCALL-BITEL:** Understood, Your Honor, and we
6 can produce all of them -- all of them that talk about the
7 pixel.

8 **THE COURT:** To the extent the Court grants all or any
9 part of this motion, what deadline for compliance do you think
10 would be realistic?

11 **MS. MANCALL-BITEL:** Two weeks would probably be
12 realistic, Your Honor.

13 **THE COURT:** Thank you.
14 Anything further?

15 **MS. PARK:** Your Honor, very quickly on the documents
16 showing the use of the non-user data --

17 **THE COURT:** I meant, anything further from the
18 Defense.

19 **MS. PARK:** I apologize.

20 **MS. MANCALL-BITEL:** No, Your Honor.

21 **THE COURT:** Anything further from the Plaintiff side?
22 If so, briefly, please.

23 **MS. PARK:** Yes, Your Honor. In terms of documents
24 that would show the use of the non-user data, there would be
25 engineering documents on the matching process, on the pixel

1 misfires, on the bot-excluding process. They have said that
2 these are things that the Defendants engage in. So there has
3 to be engineering documents on them.

4 **THE COURT:** Why does there have to be?

5 **MS. PARK:** Because by their own admission, the
6 matching process --

7 **THE COURT:** If they're ad hoc and they're done when
8 issues come up because of the numbers of visits to the website
9 reported and somebody just uses matching and unmatched data to
10 draw certain conclusions about the existence of bots or
11 misfiring pixels or whatever, why would there necessarily be
12 engineering documents reflecting that?

13 **MS. PARK:** There would, at a minimum, have to be the
14 code that the engineers are writing to exclude the bots or to
15 deal with the pixel misfires. In order to do this, even if
16 there's ad hoc, even if they're not systematic, they need to
17 write the source code. And while they're writing the code,
18 they may be sending emails or sending chats to other engineers
19 discussing the process.

20 So just by their admission that they are engaging in
21 the matching process, the pixel misfires, the bot exclusion,
22 the source code to do those functions are documents.

23 **THE COURT:** The source code has been modified to
24 pixels. Is that what you're saying?

25 **MS. PARK:** Yes, source code to engage in the examples

1 that they gave Your Honor about how they use the data.

2 **THE COURT:** So you're asking for the production of
3 all -- of information concerning all modifications that they
4 made of their pixels after the pixels had been used on the
5 advertisers' websites?

6 **MS. PARK:** No, Your Honor. I think I was -- my hope
7 was to offer Your Honor a concrete example of the documents
8 that must exist, even just taking the attorney representation
9 on how they're using the data.

10 **THE COURT:** All right. I understand what you're
11 arguing.

12 Anything further?

13 **MS. PARK:** No, Your Honor. Thank you.

14 **THE COURT:** All right, thank you.

15 Thank you all. I'm going to reflect further on the
16 issues in light of counsel's arguments. So the matter is taken
17 under submission. Thank you very much for your arguments. I
18 think I understand the issues better than I did when I took the
19 bench this morning. I anticipate ruling -- I'll certainly make
20 every attempt to rule expeditiously. I anticipate ruling
21 probably early next week. Thank you all.

22 **ALL COUNSEL:** Thank you, Your Honor.

23 **THE CLERK:** Court's adjourned.

24 **(This proceeding adjourned at 10:43 a.m.)**

25

CERTIFICATION

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in the
above-entitled matter.



Signed

October 30, 2023

Dated

TONI HUDSON, TRANSCRIBER

EXHIBIT 9

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - CENTRAL DIVISION
HONORABLE GEORGE H. WU, U.S. DISTRICT JUDGE

BERNADINE GRIFFITH,
Plaintiffs,
vs. Case No. CV 23-964-SB
TIKTOK, INC., et al,
Defendants.

REPORTER'S TRANSCRIPT OF
MANDATORY SCHEDULING CONFERENCE
Friday, September 8, 2023
10:00 a.m.
LOS ANGELES, CALIFORNIA

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1 **LOS ANGELES, CALIFORNIA; FRIDAY, SEPTEMBER 8, 2023**

2 **10:10 a.m.**

3 **--oOo--**

4
5
6 THE COURTROOM DEPUTY: All rise. This United States
7 District Court is again in session. The Honorable Stanley
8 Blumenfeld, Jr., United States District Court Judge presiding.

9 Calling Item No. 6, 23-cv-964-SB, *Bernadine Griffith*
10 *versus TikTok, Inc., et al.*

11 Counsel, your appearances starting with plaintiff.

12 MR. RHOW: Good morning, Your Honor. Ekwan Rhow on
13 behalf of the plaintiff.

14 THE COURT: Actually, why don't you introduce the
15 entire team?

16 MR. RHOW: Thank you, Your Honor.

17 To my right is Michael Gervais, Jonathan Rotter, and
18 Marc Masters.

19 MR. JIH: Good morning, Your Honor. Victor Jih,
20 along with Sophie Mancall-Bitel on behalf of defendants.

21 THE COURT: Good morning. This matter is here for a
22 continued mandatory scheduling conference.

23 I did give each side 15 minutes to present to the Court
24 the basic contours of the case so the Court can better
25 understand what is at issue.

1 I did receive PowerPoint slides from both the plaintiff
2 as well as the defense.

3 So we will go ahead and we will start with the
4 plaintiff, so if you wish to proceed.

5 I do intend to hold the parties within 15 minutes, so
6 you may proceed, counsel.

7 MR. RHOW: Understood, Your Honor.

8 Your Honor, we have -- I assume you can see the
9 PowerPoint presentation on the screen.

10 I think the goal of this presentation is really to walk
11 through an overview of the case, an overview of exactly what
12 the TikTok SDK does, and the manner in which intercepts and
13 collects private information.

14 What is this case about?

15 Your Honor, in the news, perhaps you have seen
16 information about various class actions, including one that
17 this team did, attacking the fact that TikTok and its App
18 collects data and private information from TikTok users.

19 This lawsuit is about a different subject.

20 This lawsuit is about another backdoor that TikTok uses
21 to collect private data, private information from non-TikTok
22 users on non-TikTok websites.

23 So you have seen, for example, government agencies, even
24 the state of Montana banning the App, but this is a backdoor
25 that still allows TikTok to continue collecting private data

1 about U.S. citizens.

2 So the key -- and the focus, again, of class action is
3 non-TikTok users, their confidential data, their lack of
4 consent, non-TikTok websites.

5 Why is this important?

6 The press is ripe with articles about the collection of
7 this data.

8 As indicated, governmental agencies and states have
9 banned the App, but again, by virtue of this back door, TikTok
10 is able to continue collecting data that could end up in the
11 hands of the Chinese government.

12 It has been collected on oversea servers, no dispute
13 about that; therefore, that is the concern and the focus of
14 this particular class action.

15 How does TikTok go about collecting and intercepting the
16 data?

17 It does so through what is called an SDK.

18 An SDK means software development kit.

19 I think it's a general term and in this case, you will
20 see what both parties agree is the SDK is a piece of code.

21 It's a piece of code that gets embedded really in two
22 places.

23 It gets embedded on the website of -- the third-party
24 website, the non-TikTok website, but it also gets embedded on
25 the users, the non-TikTok users' computer on the browser on his

1 or her computer. That is what the first bullet point
2 indicates.

3 This code gets embedded on the non-TikTok users'
4 computer. But virtue of that code -- I will show it
5 graphically in a second -- by virtue of the embedded code, the
6 pixel as both sides have been calling it, that code allows
7 TikTok to intercept a communication that is going from the
8 non-TikTok user to the non-TikTok website to intercept that
9 data, collect it, and send it straight to TikTok.

10 The data is collected without consent. These are not
11 TikTok users. These are not users of the App.

12 It is the opposite. These are folks who have no idea
13 there is any connection to TikTok, as they are not on a TikTok
14 website and have not provided consent for this interception and
15 collection of private data.

16 As I will explain later, the manner in which this SDK is
17 deployed, it even circumvents third-party cookie settings and
18 incognito mode settings on a browser.

19 The SDK, let me explain at a high level, Your Honor, how
20 the SDK works.

21 It really has two components. The primary engine,
22 though, is the pixel. The pixel, that piece of code, that is
23 embedded on the user's browser on his or her computer.

24 So we used an example here -- Your Honor, respectfully
25 we used sexy lingerie as an example of something that one might

1 want to keep private, if he or she is searching for that.

2 So if you look to the left, in the upper left of the
3 screen, that is the user searching on his or her computer and
4 in this case, it was the Etsy website, that is one of the
5 examples from the complaint, searching for sexy lingerie.

6 At that moment, as I will explain later, as that person
7 is searching private confidential data that that user has not
8 consented to any collection or interception, is then sent to
9 Etsy, and in the process of it being sent, the pixel intercepts
10 that data and sends that to TikTok.

11 That is the red line, Your Honor, going from the
12 communication between the user, the non-TikTok user, and the
13 non-TikTok website.

14 The red line is the interception of that confidential
15 data and the transmission of that data to TikTok.

16 Another component of the SDK is what is called an Events
17 API, API meaning application programming interface, and that
18 really compliments the primary engine and ensures that both
19 TikTok and Etsy have all of that information.

20 But to be clear, it's the pixel that is creating that
21 interception of that data.

22 Now, a lot of what I just told you, Your Honor, comes
23 partly from our own technical analysis, but it comes directly
24 from the internal literature that TikTok uses to advertise this
25 feature to non-TikTok websites.

1 I'm not going to go through this whole slide, but this
2 is an example of internal literature explaining the pixel,
3 literature explaining Events API.

4 I'm going to explain later how TikTok, not only explains
5 how the SDK works, but actively encourages non-TikTok websites
6 to use this SDK.

7 Why do these non-TikTok websites install the TikTok SDK?

8 Well, again, TikTok's internal literature explains it.
9 It says that the pixel, the SDK, and I'm just reading from the
10 highlighted section, can help you measure traffic on your
11 website, measure ad campaign performance, optimize your
12 campaigns, and find new customers.

13 As it indicates on this particular page, the data may
14 also be used to personalize ad campaigns for people on TikTok,
15 but also improve TikTok's ad delivery system.

16 That is important, Your Honor, because underlying
17 this --

18 THE REPORTER: Please slow down.

19 MR. RHOW: I am sorry.

20 Underlying this, is an ad delivery system pursuant to
21 which TikTok facilitates ads being placed on non-TikTok
22 websites, such as Etsy.

23 There is clear economical and financial incentive for
24 TikTok to maximum usage these pixels and to encourage
25 non-TikTok websites to use the SDK.

1 What is the private data being intercepted?

2 What is the private data being collected?

3 Again, the internal TikTok literature indicates exactly
4 what that is, and this is just an example of some of the data
5 being collected.

6 It includes items you are placing in your cart. If it's
7 sexy lingerie, if it's other things of a private nature, TikTok
8 will know what you are putting into your cart.

9 TikTok will know what you are searching for.

10 TikTok will know what you are in fact buying.

11 TikTok will know how much you are spending on these
12 particular items.

13 TikTok will know how long you are spending on specific
14 pages, and what pages you actually are searching on.

15 These are just examples of some of the items and private
16 data that is being collected without consent.

17 In addition to what I just mentioned, TikTok is also
18 collecting, by virtue of those intercepted communications,
19 other personal identifying information, such as e-mails, phone
20 numbers, IP addresses, and other data points from which a
21 person can be profiled and from which a person can be
22 identified.

23 I will go into that later how this identity graphing
24 works. That is the ultimate goal for TikTok, both by
25 collecting information from its own users and collecting

1 information from the rest of the United States.

2 Because, at the end of the day, for TikTok, what it
3 wants to do is tie all of the various data points that I
4 indicated to users, to e-mails, to phone numbers, to browsing
5 history, and creating a composite, Your Honor, of you, of me,
6 whether or not we have ever seen a single TikTok video. That
7 is the ultimate goal.

8 Now, the breadth of TikTok's data collection is
9 important here, and this will affect the Rule 26 scheduling,
10 which I will get to later, but this issue of how many websites
11 are these SDKs embedded on, is the very first document request
12 we have ever made to defendants, and it is the one document
13 request they refuse to answer.

14 Because the public literature already indicates that
15 this SDK is found on hundreds, perhaps thousands of non-TikTok
16 websites, the sensitivities associated with those websites are
17 immense; they include churches, they include healthcare related
18 companies, they could include governmental entities, so you
19 could imagine, Your Honor, that the sensitivity that arises
20 from Etsy can be compounded to the extent we're dealing with
21 health-related information or financial information.

22 This again, comes from public sources and disclosures
23 that TikTok has made.

24 THE COURT: Counsel, I don't want you to speed up
25 your speech, but you have five minutes.

1 MR. RHOW: Understood. Thank you, Your Honor.

2 What is TikTok's role here other than obviously making
3 the SDK available?

4 Their goal is very intentional.

5 Their goal in providing this pixel, their goal in
6 intercepting and collecting data is clear from the nature and
7 manner in which they set up the pixel.

8 Because, if it is true that TikTok does not care about
9 non-TikTok users' personal information, it would have been easy
10 for them to insert source code that would not let them collect
11 the non-TikTok users' information.

12 That would have been a very simple thing to do. They
13 chose not to do that.

14 In fact, if you look at their internal literature, their
15 description of the SDK indicates that their best practice that
16 they recommend to these non-TikTok websites is collect all of
17 this information, as much of it as possible, send it to us,
18 pursuant to the pixel.

19 In addition, the default configuration, and I know that
20 TikTok would go into the configuration, the default
21 configuration that exists allows for first-party cookies.

22 Guess what, Your Honor, that pixel, it's not supposed to
23 be a first-party cookie, because the information is not getting
24 sent just to Etsy, it's getting sent to TikTok directly, but
25 when you allow this configuration to exist, you are

1 inadvertently authorizing the interception and transmission of
2 your data, not to Etsy, that is a first-party cookie, but to
3 TikTok. That is the default configuration that exists.

4 The recommended configuration they ask for, and this is
5 the internal literature, it that it be both pixel and Events
6 API to maximize that collection.

7 What is the -- how are they benefiting from this
8 non-TikTok -- from this information from non-TikTok users?

9 This is a very important slide, Your Honor, because one
10 of the representations that have been made to us in the meet
11 and confer is that as to the non-TikTok users' data, it's
12 deleted. We don't use it.

13 That is a direct representation from the meet and confer
14 letters.

15 This is Public Statement No. 1 from a TikTok
16 spokesperson, who said the exact opposite.

17 She says: We in fact do collect it. We put it into
18 aggregated reports. We send them to advertisers.

19 So it is not true, unless this spokesperson for TikTok
20 was not -- was not aware of the truth.

21 It is not true that they are not collecting it.

22 To the contrary, they are maintaining it, they are using
23 it, they are putting it into reports to benefit themselves.

24 The other ways in which TikTok benefits is improving the
25 predicted algorithms. But the ultimate goal, as I mentioned,

1 Your Honor, is what TikTok wants to do, both through its App,
2 both through all of its data collection, but particularly,
3 through this back door is to create an identity graph.

4 That is the goal.

5 For every person in the United States, take all of this
6 various data, identify the person, and then create a composite.

7 That is what identity graphing is. That is exactly what
8 their own ads -- when they send out requests for employees,
9 their ads, their help wanted ads indicate, if you read the job
10 description, this is from a couple of months ago, that they
11 want to collect online/off line activity to create an identity
12 graph.

13 This is the ironic part, they write, in a privacy
14 compliant way.

15 That what this class action raises, Your Honor. There
16 is no dispute, because TikTok admits, they are trying to do an
17 identity graph. There is not a dispute because TikTok admits
18 that they are collecting this data.

19 The reason we filed this lawsuit, it is far from privacy
20 compliant; it's illegal.

21 THE COURT: I do have just a few questions, very
22 briefly.

23 Are there any actions -- state actions, government
24 actions or private actions with regard to pixels or the other
25 issues being challenged in this Court against TikTok or any

1 other company, as far as you know?

2 MR. RHOW: I can't speak for that which I don't
3 know. We clearly were the first to file, as to TikTok, on
4 this.

5 I'm not aware of subsequent lawsuits dealing with the
6 pixel.

7 I'm not aware of subsequent lawsuits in which TikTok has
8 been named *vis-a-vis* these issues.

9 As to your second question, are there other websites --
10 I'm sorry -- other websites that have done that?

11 I believe Google has been subject to something similar,
12 where code, in terms of an SDK, gets embedded and you will see
13 in our motion to dismiss papers, we do cite to some of the
14 underlying opinions that relate to that and support really of
15 our claims here.

16 I do believe Google has faced cases where -- similar to
17 this, I will say that -- at a very high level.

18 I will be honest, Your Honor, I haven't fully analyzed,
19 we are aware of those, in general.

20 THE COURT: You have indicated that the goal for
21 TikTok is essentially to create an identity graph.

22 What is the purpose that you are alleging for TikTok's
23 creating this identity graph?

24 MR. RHOW: To some extent, you would have to ask
25 TikTok if the Chinese government is involved, and there is a

1 next of that, the Chinese government's goal with that data,
2 obviously are to track United States citizens on what they are
3 doing, and to use that information in some way adverse to the
4 interests of the United States.

5 But in terms of the benefit to TikTok, by doing identity
6 graphs, they can more tailor their ad campaigns, their ad
7 delivery system.

8 There is clearly financial benefits to them to
9 understanding the identities of these various folks.

10 THE COURT: All right. So you are contending that
11 primarily there is a financial benefit to TikTok, but there
12 potentially is an ancillary benefit in the event the
13 information is being improperly used by the Chinese government,
14 as to which you have no information.

15 MR. RHOW: Correct, Your Honor.

16 Even in the underlying prior class action that we did,
17 which did get resolved, we weren't able to depose the members
18 of the Chinese government.

19 I would note on that point, the reason we raise it, it's
20 not just obviously from the tremendous amount of press, it's
21 the fact that until very recently, the information that was
22 being collected was being stored in servers outside the United
23 States.

24 There has been a representation made that very recently,
25 the servers are now in Texas. I don't know if that is true, I

1 would love to take discovery on that, but certainly we see the
2 issue, which is, until very recently, we know that a lot of the
3 data was moved overseas and is still there.

4 There is no representation that that data has ever been
5 deleted. It is sitting on an outside server without guard in
6 terms of whether it's the Chinese government or other folks and
7 agents overseas.

8 THE COURT: Let me hear from TikTok's counsel.

9 Before you get started, Mr. Jih, you may or may not be
10 familiar with another TikTok case that this Court presided
11 over, fairly recently.

12 And I hope, Mr. Jih, that you are aware that Magistrate
13 Judge Kim, who was presiding over the discovery, awarded
14 approximately \$300,000 in sanctions against TikTok for
15 discovery abuses.

16 And I have no reason to believe, you, as their counsel,
17 will engage in any wrongdoing.

18 But be aware that the Court is aware that your client
19 has a history, and a concerning history.

20 So, let that, at least, guide you to an appropriate
21 extent so that the same mistakes that were made in that case,
22 do not reoccur.

23 My comments shouldn't be abused by plaintiff's counsel
24 to try to seize upon what the Court has stated in order to gain
25 leverage in the discovery process.

1 I will be on the lookout for that if it comes to the
2 Court's attention.

3 The Magistrate Judge will be doing the discovery in this
4 case.

5 There were also, in that case, were concerning behavior
6 by the plaintiffs as well.

7 History, best not repeat itself, in this case.

8 This Court will have no hesitation supporting whatever
9 appropriate sanctions, either to counsel, to the parties,
10 whatever is appropriate, if I see any wrongdoing.

11 I expect all sides to be as forthright as the rules,
12 both the spirit and the letter of the rules require, consistent
13 with all counsels' professional obligations.

14 If it's brought to my attention that that is not
15 occurring, you could expect you will be before me.

16 Mr. Jih?

17 MR. JIH: Thank you, Your Honor. I'm aware of the
18 concern, and I do appreciate the concern.

19 Certainly, we fully intend to fully and go beyond our
20 duty to comply with everything that we need to, Your Honor, to
21 rebuild that reputation, Your Honor.

22 In terms of the issues before the Court today, if you
23 compare the two presentations, one thing that becomes very
24 obvious is that thankfully the facts in terms of how TikTok's
25 code actually works is not really in dispute.

1 There are a lot of liberties taken in terms of things
2 around it. I'm going to isolate what I think the main disputes
3 areas are, but the actual functionality of the pixel, and, you
4 know, how it works, how it operates, we both actually agree on,
5 and it comes from publicly available sources, because TikTok
6 has fully disclosed and the documentation they are relying on
7 is the same that we are relying on.

8 THE COURT: Make sure you are slowing things down
9 considerably, please.

10 MR. JIH: I will.

11 THE COURT: Please proceed with your presentation,
12 please.

13 MR. JIH: I only have eight slides. The first was
14 the title page, so No. 2.

15 When we talk about the SDK, TikTok's SDK, as plaintiff's
16 acknowledged, SDK is a generic term that remain and be used by
17 different people in different ways.

18 The complaint, though, makes clear that this case is
19 about the, quote, unauthorized interception collection, saving
20 and use of non-TikTok users, what they claim highly personal
21 data, whenever they visit a website with the TikTok SDK
22 installed.

23 Then, in their discovery they have sent to us, they have
24 also defined it as all similar TikTok software used --

25 THE COURT: Slower, please.

1 MR. JIH: All similar TikTok software used by
2 third-party websites.

3 So with that in mind, there are actually three things, I
4 just want to make sure we are all on the same page on, that
5 TikTok provides to third parties, advertisers.

6 One, there is a pixel that they talked about, and the
7 Events API.

8 But there is another one, just so we get it out there
9 and there is no confusion, that TikTok calls its SDK.

10 But that, Your Honor, is not at issue in the case,
11 because it deals with Apps on your phone and it's allowing
12 TikTok users to sign in to another person's App using their
13 TikTok credentials, like sometimes Google does or you could use
14 your Apple credentials to create an account on other website;
15 or it allows functionality, where can you go from something and
16 share something to your TikTok account.

17 We understand that, not to be at issue, because it only
18 involves TikTok users.

19 You can only do this if you are a TikTok user, and it's
20 not something installed on third-party websites, it's something
21 completely different.

22 Even though it's called an SDK, our understanding is
23 that's not what this lawsuit is about.

24 THE COURT: Have you spoken to the other side about
25 that?

1 MR. JIH: We have talked about the confusion over
2 the SDK and that terminology, and I think from their
3 presentation, it's very clear that they agree with us, the
4 focus is on pixel, and Events API.

5 THE COURT: Continue, please.

6 MR. JIH: Now, on those two, those two are designed
7 as tools for advertisers on the TikTok platform to be able to
8 get some understanding into whether those ads are effective,
9 whether or not they do anything for the advertiser.

10 The pixel and the Events API are different in this
11 respect, and they acknowledge this in their presentation.

12 The pixel is a piece of code that gets loaded when you
13 load a website. It's embedded in pages on a website.

14 The Events API has nothing to do with the website. What
15 that is, as their own drawing suggests, is a direct
16 communication between an advertiser and TikTok.

17 It's a server to server, as some have described. It has
18 nothing to do with what is loaded on the website.

19 An example might be this: If Build-a-Bear wants to know
20 if TikTok ads are effective in getting people to buy different
21 Build-a-Bears, or particular bears, I have actually never done
22 it.

23 It might give information to TikTok and say, hey, here
24 is a list of everyone who bought a bear in the last month and
25 their e-mail addresses.

1 TikTok can take that information, see if any of the
2 e-mail addresses match, and say, hey, it looks like X percent
3 of them are TikTok users, and it looks like X percent saw the
4 ad or the campaign that you put on TikTok.

5 But that kind server to server, what we call an Events
6 API, is a direct communication between the advertiser and
7 TikTok, that doesn't involve installation on a website. It's
8 not on a website. It's direct communication that has to be
9 configured directly.

10 Our understanding, based on the scope of the complaint,
11 I think the plaintiff's presentation sort of acknowledges this
12 too, is that is not really what the crux of the issue is,
13 because their complaint is focused on what happens when you
14 load a web page, which is why they define the case as one about
15 what happens with websites with an SDK installed.

16 The Events API is never installed on a website.

17 I think they described it as something that goes with
18 the pixel, but it doesn't seem like that itself is the focus of
19 any the claims or somehow there is anything wrong with an
20 advertiser directly sharing the information with appropriate
21 safeguards with TikTok.

22 So we understand the case to be about the pixel.

23 What the pixel does -- I should go to the prior page for
24 a second. There is one thing I want to point out, if you look
25 at the drawing that we have here on the left, it shows that if

1 someone goes to Build-a-Bear, if the pixel is installed, there
2 will be communications to Build-a-Bear, and the separate
3 communication to TikTok.

4 The idea is when you load that web page, basically it's
5 almost like sending two carrier pigeons out at the same time,
6 so whatever TikTok gets is what Build-a-Bear gets, depending on
7 how it's set up.

8 The reason I point that out is because the plaintiff's
9 picture, the way they drew it, that red line about sexy
10 lingerie goes to the middle of the line.

11 I understand why they do it, because one of the issues
12 is whether or not there is interception of a communication
13 while it's in transit.

14 But even though that might be a legal dispute, factually
15 it really isn't in question, because they acknowledged we're
16 not going out to try to capture packets in the wild, it's
17 something loaded on a website, and it's what that web page in
18 the computer of the user sends to TikTok at the same time it
19 sends to the website owner.

20 So I just want to point that out will be a point of
21 dispute, but I think it's more about characterization than it
22 is about the facts.

23 We will go to the next page.

24 The pixel, itself, we call the base code. This isn't
25 one of those cases where we need to go to a clean room and do

1 source code review.

2 The base code of the pixel is published online. Anyone
3 can see it.

4 The way the pixel works, if you take that code that you
5 can look up on the TikTok website, and put it on your website,
6 and that's all you do, if whenever that page is loaded, TikTok
7 will receive a couple of basic pieces of information.

8 It will know IP address of the person who's using it,
9 who tried to access a particular website.

10 It will have what they call a user agent. All the user
11 agent means, it's tech terminology for browser. Are you using
12 Chrome, are you using Safari, are you using -- I don't all of
13 the ones, and what operating system you are using. Are you
14 using Safari on Windows 11, are you using Safari on Windows 10?
15 That's what the user agent refers to.

16 And third, the URL you are trying to visit. That
17 information, by the way, is what happens and is communicated
18 with every single request you make on the Internet, because
19 that is built into how the Internet works.

20 It has to know where you are trying to go or what
21 information you are trying to get, which is the URL.

22 It has to know who is doing it, so we can respond, that
23 is the IP address, and it has to know how you are doing it,
24 what browser you are using, so it can make sure it communicates
25 with you in a way you can then display it or understand it.

1 THE COURT: Slower.

2 MR. JIH: TikTok, if you install the pixel and do
3 nothing else, it will get what is always sent with any Internet
4 transmission, IP address, URL, and user agent.

5 That, by itself, can be helpful to an advertiser, but
6 not really. You need more information.

7 So if we go to the next slide.

8 THE COURT: Before you move on to the next slide,
9 let me make sure I understand.

10 In the absence of the pixel, TikTok wouldn't get the IP
11 address, the user agent, or the URL?

12 MR. JIH: That's correct.

13 THE COURT: All right. Workshop might get it, but
14 TikTok would not.

15 MR. JIH: Right.

16 THE COURT: Continue.

17 MR. JIH: Yes. As I pointed out, the TikTok pixel
18 itself is publicly available, the code, you can see it called a
19 piece of Javascript that comes from TikTok.

20 That Javascript will change, depending on the website,
21 because it depends on how that website owner configures the
22 pixel.

23 So in terms of that Javascript, anyone, depending on the
24 website, that settings or the configurations may change, it
25 could change it any time they want.

1 So as a result, the Javascript that gets pulled up, will
2 be customized, so to speak.

3 In order for the pixel to disclose any additional
4 information, you have to configure it, and by you, I'm
5 referring to the website owner.

6 Not only does the website owner have to install it or
7 put it on their page, so they make the decision to use it, but
8 they make very important decisions in terms of what information
9 is communicated.

10 Specifically, there are some settings, which also appear
11 in their presentation, there is something called automatic
12 advanced matching.

13 The website owner gets to decide and tells TikTok,
14 should you check the page or check the website that they are
15 looking at and scan for any e-mails or addresses or phone
16 numbers -- I'm sorry, e-mails or phone numbers, in order to
17 help with the matching.

18 If they don't select that to "on," then TikTok pixel
19 won't do it.

20 If they select it to "on" the TikTok pixel will look at
21 the page. They will say, oh, are you providing a phone number,
22 are you providing an e-mail address?

23 On cookies, it also -- the website owner has to decide
24 am I going to allow you to use first party or only third party
25 cookies.

1 One thing I will note that there is a difference in the
2 way they described it.

3 What makes a cookie a first-party cookie versus a
4 third-party cookie is not who can read it or access it.

5 I think if you have had any similar cases, any expert
6 can access the contents of a cookie. It may not mean much to
7 you, anyone can look and read at a cookie.

8 The issue is who places the cookie, who is responsible
9 for the cookie, who determines what goes in the cookie.

10 So the trend in the industry is for a move towards
11 first-party cookies as opposed to third-party cookies, because
12 that's the person, the visitor has any interaction or
13 relationship with.

14 The responsibility is shifting to the website owner to
15 place the cookie, and be responsible for what is in it and to
16 get permission from the user.

17 THE COURT: Mr. Jih, at the risk of having you speed
18 up, which you need to slow down, you have five minutes, so
19 please make sure that you are slowing down, not speeding up.

20 MR. JIH: Okay. The other thing that needs to be
21 configured are the events or the triggers that are the events
22 that the pixel will then send information to TikTok.

23 It could be add payment info, add to cart, et cetera.
24 Along with the events the website owner has to configure the
25 parameters, meaning what data to pass on.

1 Do you want to pass on the product name?

2 Do you want to pass on a number?

3 Do you want to pass on an amount?

4 It all depends on what the website owner, in this case,
5 an advertiser, cares to know more about.

6 They can change it on the fly; they can change it on a
7 whim, they could not use it.

8 The one thing I will disagree with plaintiff's
9 presentation, this information doesn't just happen and
10 automatically get collected.

11 It can't be without it being configured by the website
12 owner. They have to do some programming to say how purchasing
13 looks on their website, or else it doesn't send the
14 information.

15 All of this has to be programmed.

16 As a result, because TikTok can't know how the website
17 owner is going to use it, or whether it's sensitive or not, we
18 make very clear that the website owner and advertiser has to
19 make sure they are being transparent and lawful.

20 So they say we're trying to push certain features, sure,
21 but we're simultaneously pushing the obligation that they are
22 aware of, both at what you are sending us, because you are
23 deciding what you want to send us, make sure you are complying.

24 Go to the next page.

25 THE COURT: And is there essentially a default

1 setting such that if someone doesn't have a clue about how to
2 program this and doesn't have a programmer, that it
3 automatically defaults to various settings, as I understood the
4 plaintiffs to suggest?

5 MR. JIH: It defaults, like I said, to the
6 information that always goes, it defaults to allowing
7 first-party cookies, but without configuring events and without
8 defining parameters, no information is sent.

9 You could have a cookie placed, but you won't actually
10 be able to send any information without defining the events you
11 care about, and setting the parameters of the information that
12 is being sent.

13 So someone who doesn't know how to do it, nothing other
14 than the three things I told, Your Honor, gets sent.

15 THE COURT: So it actually does require a level of
16 knowledge and sophistication to make purposeful setting
17 decisions, otherwise, you are suggesting that the information
18 that is being sent out to TikTok is of no value?

19 MR. JIH: Correct, or limited to your URL, IP
20 address, and user agent.

21 THE COURT: Continue, please.

22 MR. JIH: The next slide shows, by the way, we're
23 being completely transparent on how websites use or do not use
24 the pixel.

25 If you have a tech background, you can always inspect

1 the source code and find it, that is what the experts do.

2 TikTok created a tool that you can install on your
3 Chrome browser called the TikTok pixel helper.

4 Any page you go on to, and in this case we did an
5 example of going on to Build-a-Bear, you click on that
6 extension, that helper, it will immediately tell you if the
7 pixel is being used for TikTok, and what information is being
8 passed on to TikTok.

9 So, in this case, it says there is a TikTok pixel, there
10 is one that was found.

11 The Build-a-Bear pixel shows page view and it also shows
12 event in terms of the content that was viewed, in this case a
13 blob fish.

14 It goes further and tells you exactly what parameters
15 are passed.

16 Here, we have the content ID, I assume the product ID,
17 content type, quantity, it costs \$22 in US dollars.

18 All of those parameters are set by the website owner
19 based on what they care about.

20 And then they decide, okay, we're going to send this
21 information to TikTok, but only if they decide, yes, that is
22 the information we want to send to TikTok.

23 Go to the next page.

24 What TikTok then does --

25 THE COURT: Counsel, I'm going to give you another

1 two minutes. You are out of time, but I have asked you some
2 questions.

3 MR. JIH: All right. What we try to do is take all
4 of this data and match it to a TikTok user.

5 We're trying to figure out if the person who bought this
6 blob fish on Build-a-Bear is actually a TikTok user, and then
7 further, if they saw one of the ads.

8 The way we do that, is we take the information that is
9 provided by the website owner and try to make a match.

10 If there is an e-mail match, that is great, if there is
11 a phone number match, we do that, if there is a website ID,
12 meaning like a Build-a-Bear ID that they tell us information
13 about, maybe we try to match that.

14 We try to place a cookie to see if we can match it with
15 information we have of the TikTok user, and the browser
16 information.

17 Somewhat -- sometimes we can tell, for sure, it's a
18 TikTok user, sometimes it's a little bit more probablistic.

19 One thing I will point out, our ability to match is
20 limited somewhat because most people use TikTok on their
21 phones. They are not using it on their laptops, you can't.

22 So as a result, we can't do things like Facebook does,
23 for example, where it's basically the same device.

24 A lot of times it's same the device. In fact I would
25 say of all the noise we get from this, less than a third, we

1 can match.

2 One thing I will say, they say all we have to do is not
3 collect this information for non-TikTok users.

4 If we think about it for a moment, that is impossible,
5 because we need that information to determine if they are a
6 TikTok user. That's the way we figure out if the information
7 we're getting is noise or if it's information that is useful to
8 the advertiser.

9 There is no way to do that without knowing that. There
10 is no way we can say you are a TikTok user or not.

11 THE COURT: Because you are out of time, in 30 or so
12 seconds, explain to me the commercial purpose for matching and
13 determining whether there is a match.

14 MR. JIH: The commercial purpose is to determine the
15 efficacy of an ad and advertiser may have used on the TikTok
16 platform.

17 This idea -- everything they say about identity matching
18 or about, you know, the other one, they were saying about
19 targeted advertising, makes no sense in this case, because we
20 only show ads to TikTok users.

21 So the only things that we're trying to target are
22 TikTok users.

23 The identity profile they are talking about, their own
24 slide says is to better deliver ads. The only ads we have are
25 on the TikTok platform.

1 THE COURT: So just to boil this down, so first of
2 all, is TikTok actually providing to potential users --
3 potential advertisers the information of effectiveness or
4 efficacy of advertising on the TikTok site?

5 MR. JIH: That's the purpose of these tools, if they
6 use it, we can give them information in an aggregated sense,
7 maybe of saying only this many people we can even match to a
8 TikTok user. It's not specific information, it could be
9 general or more targeted saying this many bought a bob fish,
10 depending on what they want to know.

11 THE COURT: In terms of the regular business
12 practice of TikTok, is TikTok regularly providing information
13 to advertisers that provides the matching information that you
14 are contending its purpose is used for?

15 MR. JIH: For TikTok users, absolutely.

16 For non-TikTok users, other than that aggregated sense
17 and we couldn't match them, no, because we don't know who they
18 are.

19 THE COURT: So I am Build-a-Bear workshop, are you
20 providing me -- I'm advertising on your TikTok site, are you
21 regularly providing me or providing me with information that
22 would enable me to determine the efficacy of my advertising on
23 TikTok?

24 Obviously, it could be coincidental that you have a
25 match, but are you providing me with that information?

1 MR. JIH: Depending on what you configure the pixel
2 to gather, we then provide analytics based on that information.

3 But if you don't configure it, we can't tell you, for
4 example, what happens with blob the bob fish or something like
5 that.

6 THE COURT: Do you prominently disclose to potential
7 advertisers if this, then that? If you place the settings a
8 certain way to enable us to obtain this information, then we
9 will provide you with data that you could then use to determine
10 the efficacy of advertising with us?

11 MR. JIH: Yeah. It's actually on every page they
12 sort of even copied in their presentation.

13 It says, we do it matching to give you better
14 information about users to see if we get a match.

15 On the TikTok pixel helper, it even makes very clear,
16 and obviously advertisers can use that well, it says be careful
17 what you share and don't send sensitive information. Choose
18 the information you want us to analyze.

19 THE COURT: I take it, Mr. Jih, that the user, that
20 is consumer, has no input in this?

21 MR. JIH: I disagree.

22 The responsibility affecting the three websites at issue
23 in this case, the responsibility is on the website owner to
24 disclose how they are using three tools or what they are using,
25 and in all three instances they do.

1 I think the users, and this is the trend for first-party
2 cookies, the user has to have an interaction with the website
3 owner.

4 The website owner needs to disclose how they are using
5 other vendors or other analytical tools on their site.

6 THE COURT: If I'm being asked this question, as I
7 am thinking of buying a product from Build-a-Bear, and I say, I
8 don't want you to give any of my information out.

9 How do they implement that if they have a variety of
10 consumers, some of whom opt in or opt out?

11 MR. JIH: Well, I think that is why Build-a-Bear,
12 you see nowadays, as soon as you go to a website, it has this
13 consent saying, we use cookies, do you want that or not?

14 At some level, it's up to the website owner and the user
15 to decide if you are not giving me the option, then just don't
16 go to the website.

17 We don't get in the middle of that, because we can't get
18 in the middle of that.

19 THE COURT: From a technological standpoint, TikTok
20 undoubtedly understands this.

21 So if you have consumers, some of whom agree and some of
22 whom disagree, there is no practical way or is there for
23 Build-a-Bear to provide information only as it applies to the
24 people who agree to have the pixel fully loaded, if you will,
25 going to TikTok?

1 MR. JIH: There absolutely is. Depending on how the
2 website wants to program itself, it could decide for the users
3 that don't consent, that they have a certain process flow and
4 the users who do give consent have a certain process flow.

5 It depends on the website design of whether or not the
6 information implicated is sensitive or not; it may not be.

7 THE COURT: Have you done a reasonable investigation
8 thus far with your client to understand the analytics, meaning,
9 the percentage, for example, of websites that provide full
10 access to TikTok, so that it could provide the matching data
11 relative to those that don't, and then also those that fit
12 somewhere in the middle?

13 MR. JIH: It's hard. There is no conception of all
14 because it really depends on the website and what they offer.
15 What "all" looks like is very unique.

16 But we certainly have talked to the client about the
17 fact who uses a pixel can change at any moment and also talked
18 about the fact of exactly how they can configure it.

19 We are actually about to produce the other side, even
20 though they can check any website themselves, a list of the top
21 100 advertisers who have used a pixel in the last 30 days, so
22 they at least have a list to explore, but the actual
23 configuration just depends on the time and the website.

24 THE COURT: If you could answer this question, yes
25 or no, please, because we are going to conclude this.

1 Does TikTok have some understanding as to the percentage
2 of advertisers who provide sufficient information so that
3 TikTok can conduct the matching?

4 MR. JIH: That question -- the way it's asked, I
5 don't know how to answer it.

6 I can tell you of all of the data we get, we can only
7 match less than one-third.

8 THE COURT: All right. Let us turn -- you could
9 stay where you are -- we're going to turn very quickly to case
10 management order issues.

11 So right now, the parties have requested the date of
12 July of 2025. We are not going that far, and the defense has
13 said December 9th of 2024.

14 So have the parties further met and conferred to see if
15 they can reach an agreement that accommodates the Court's
16 concern, perhaps, gives you a little bit more time, but not the
17 amount of time you are seeking?

18 Have the parties done that, Mr. Jih?

19 MR. JIH: We have been trying.

20 The impasse is we don't think we need that much time.

21 As the defense, the big impasse issue is how long before
22 they have to make their class certification motion.

23 They want to do it almost a year later than what the
24 Court's default rules provide, whereas we want to follow the
25 default of 120 days. That is the big impasse.

1 Our belief, as you can see from the presentations, the
2 basics of how it functions and whether or not we can decide
3 across a bunch of websites, that basically can do that motion
4 sooner rather than later. That is our view.

5 THE COURT: All right.

6 Let me then hear from plaintiff's counsel, very briefly,
7 on that issue, tell me what your revised request is, assuming
8 there is a revised request, and I will take the matter under
9 consideration.

10 MR. RHOW: Your Honor, if I may, I think the
11 statement Mr. Jih just made about his disclosure of a sampling
12 of the third-party websites that use the code, should be the
13 starting point to the schedule.

14 Because one month after we filed our lawsuit, we sent --
15 the first document request said: Please identify documents
16 sufficient -- sorry, we want documents sufficient to identify
17 all of these third-party websites.

18 Their response, to be clear, Your Honor, was we will do
19 it.

20 We will produce documents sufficient to show all -- all
21 third-party websites that use or have used the pixel or Events
22 API.

23 Now, we're hearing and in meet and confer, they said
24 they would only give us a sampling, and now we're hearing it's
25 the top 100.

1 That is the problem with even putting together a
2 schedule.

3 THE COURT: Mr. Rhow, let me just cut to the chase.

4 I don't set schedules on the assumption that parties are
5 going to engage in bad faith and not comply with discovery
6 obligations.

7 I set schedules on the reverse assumption.

8 I have already communicated, I think, fairly clearly
9 what the Court's expectations are with regards to discovery.

10 I'm going to be watchful of TikTok, but I'm also going
11 to be watchful of the plaintiff.

12 Let me explain to you the concern the Court had in the
13 other case with regard to TikTok.

14 There was serious concerns where they were sanctioned
15 heavily. Also, serious expressed by Judge Kim that were borne
16 out, as far as I'm concerned, that the plaintiffs were really
17 overreaching in the discovery that they were seeking.

18 Once again, TikTok should not misunderstand the Court,
19 I'm not suggesting that they can use what I just said as
20 leverage in any kind of effort to withhold information.

21 I'm expecting TikTok to be forthright, and if they
22 engage in the behavior that they engaged in the prior case,
23 they are going to feel much more pain than they even felt in
24 the previous case.

25 But I'm also expecting the plaintiffs to operate in good

1 faith as well, and get what you actually need.

2 Don't shoot for the moon, get what you actually need to
3 prosecute your case.

4 That is as much as I'm going to say here, and I'm going
5 to expect and demand all counsel to behave themselves and to
6 cooperate appropriately, and hue their professional and ethical
7 responsibilities.

8 Assume TikTok has gotten the message, and assume you
9 have gotten the message.

10 Now, answer the Court's question.

11 MR. RHOW: Your Honor, assuming we get that
12 information timely, I think we could move up the schedule.

13 The big delta between the two sides is that they have
14 expert discovery and class certification all overlapping with
15 each other.

16 Part of the reason -- I don't mean to go back to this
17 issue -- the reason we asked this document request first was an
18 effort to case manage and be efficient, because once we know
19 the scope and breadth of the issue, discovery can occur, then
20 expert discovery can occur, then class certification can occur
21 because certification issues are intertwined with the breadth
22 of the class, the breadth and scope of the usage of the pixel
23 and how it operates.

24 They are all intertwined, so what we try to do,
25 respectfully, even with this initial discovery, is case manage

1 and be efficient, so I think we could move it up, Your Honor.

2 I would have to go back and, you know, be prepared --

3 THE COURT: This is your opportunity, so either you
4 are going to weigh in right at this moment or you are not,
5 bearing in mind, counsel, I set class certification hearings in
6 every case, and I set schedules in every case, even for
7 complicated cases; this is not a unicorn of a case.

8 It doesn't actually seem that it's terribly complicated.
9 I don't mean to suggest that it is a simple case, but it does
10 not seem to be the most complex case that has been presented
11 before this Court.

12 So, you can either give me revised dates, or I will go
13 on what you have previously given me. You could be rest
14 assured I'm not going to give you what you have requested.

15 MR. RHOW: Understood, Your Honor.

16 As long as various stages proceed sequentially, I think
17 we could move things up by six months.

18 I think the trial right now is set 24 months out, so
19 this would take us to the end of 2024, in terms of the
20 completion of the case.

21 THE COURT: All right. I will take what I have
22 learned and what I have just now heard about the requested
23 schedule under advisement, and you can expect I'm going to be
24 issuing a case management order in short order.

25 I do appreciate the presentations, they were well done

1 and they were useful.

2 Thank you. Have a good weekend, everyone.

3 MR. RHOW: Thank you, Your Honor.

4 MR. JIH: Thank you, Your Honor.

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6 (The proceedings concluded at 11:02 a.m.)

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CERTIFICATE OF OFFICIAL REPORTER

COUNTY OF LOS ANGELES)
)
STATE OF CALIFORNIA)

I, TERRI A. HOURIGAN, Federal Official Realtime Court Reporter, in and for the United States District Court for the Central District of California, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the judicial conference of the United States.

Date: 19th day of September, 2023.

/s/ TERRI A. HOURIGAN

TERRI A. HOURIGAN, CSR NO. 3838, RPR, CRR
Federal Court Reporter

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